JOHN W. DAVIS

THEODORE A. HUNTLEY

THE LIFE OF
JOHN W. DAVIS

CONTEMPORARY STATESMEN SERIES:

Edited by Horace Green.

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4. *The Life of John W. Davis*
   by Theodore A. Huntley (with a compilation of speeches by Horace Green).

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JOHN W. DAVIS, AS HE IS TODAY

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JOHN W. DAVIS

By
THEODORE A. HUNTLEY

Edited, with a compilation of speeches, by

HORACE GREEN

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TO

MY WIFE

ACKNOWLEDGEMENT

Numerous persons have aided in assembling material for inclusion in this biography. Their friendly interest cannot easily be compensated. To all of them, and particularly to Louis A. Johnson, Esq., and other friends in Clarksburg, the author freely acknowledges his indebtedness, and expresses the hope that they may find in the following pages satisfaction for the debt.

T. A. H.

FOREWORD

Carlyle said: "The history of the world is the biography of great men."

This is the biography of an American. Greatness is a relative term, and requires definition. If simplicity is greatness it properly applies. If greatness is to be measured in material gains, he will doubtless be weighed and found wanting. If the measure be intellect, he will take a higher rank. If greatness lies in moral achievement, his place is perhaps assured. Men will apply the tests they know and recognize. The public will make its own analysis and arrive at its own conclusions. This biography is intended to supply fact, incident, and background on which conclusions may be based.

Even in modern democracies, with their wealth of opportunity, it is seldom that one man, in so short a space of time, rises from humble beginnings to a place of equal eminence. A country school teacher at 19, teacher of law at 23, floor leader in the legislature of his state at 25, head of the West Virginia bar at 33, a commanding mind in Congress at 38, Solicitor General of the United States at 40, appointed to the nation's highest diplomatic post at 45, the acknowledged leader

of the American bar at 49, the presidential nominee of his party at 51—such, in briefest outline, is the record of John W. Davis.

That the record was built on foundations of integrity, honor, and courage, and of service to his fellows, the facts clearly disclose. His qualities draw others to him. The honors and responsibilities that have been his have come unsought.

To know him is to like him. He combines the wit of the Irish, the philosophy of a Scot, and the music of the Welsh. His humor is clean and buoyant without being boisterous. He has an orderly mind well stocked with the things that count. For conviction he rests his case on facts and logic, concisely marshaled. His emotional nature runs deep, but not too deep, beneath the reserve of his race. Candid eyes, a projecting chin, a quick but quiet smile and a head high above the ears present a picture of strength, dignity and determination, of poise without pose. He can listen as well as speak. He likes his books arranged on open shelves.

"He reads much;
He is a great observer, and he looks
Quite through the deeds of men."

His ethics are old as the hills which gave him birth. They are found in the teachings of most of the moral philosophers. His personal code is simple. It was brought down from Mount Sinai by an ancient lawgiver, on tablets of stone.

Nor is he without honor in his own country. There, where they know him best, "a cloud of witnesses ap-

pear'' to attest their affection. They call him ''John W.'' His father they called ''John J.''

His words and actions reflect the doctrine learned from his father's lips. His mother, whom he resembles, once wrote that the whole of man's duty is summed up in two Commandments given by a great Teacher: ''Thou shalt love the Lord thy God with all thy heart, with all thy soul, with all thy mind, and with all thy strength;'' and ''Thou shalt love thy neighbor as thyself.'' Under these influences John W. Davis grew to manhood. The story of his life is as much the story of a boy as that of a man, and of the parents as of the son. For it is essential, in considering the character and achievements of any man, to discover and reveal the influences which shaped that character and made possible those achievements. This has been done. Heredity endowed him with good gifts. In the plastic period of youth, environment molded his thought as a modeler molds his clay.

His education was begun by a mother of fine mind and ideals, and carried on through the years by contact with life in many phases. The result recalls Huxley's definition of an educated man:

> ''That man I think has a liberal education whose body has been so trained in youth that it is the ready servant of his will, and does with ease and pleasure all that, as a mechanism, it is capable of; whose intellect is a clear, cold logic engine with all its parts of equal strength and in smooth running order, ready, like a steam engine, to be turned to any kind of work and to spin the gossamers as well as to forge the anchors of the mind; whose mind is stored with the great fundamental truths of nature and the laws of her operation; one who, no stunted ascetic, is full of life and fire, but whose passions have been trained to come to heel by a vigorous will, the servant of a tender conscience; one who has learned to love all beauty, whether of nature or of art, to hate all vileness, and to esteem others as himself.''

Be that as it may, here is the record. It is designed to be authentic. It attempts to answer the question: "What manner of man is this?"

T. A. H.

August 20, 1924.

PART I

THE LIFE OF JOHN W. DAVIS

THE LIFE OF JOHN W. DAVIS

CHAPTER I

THE TREE AND ITS FRUIT

Thomas Jefferson is regarded by John W. Davis as the greatest political thinker the United States has produced, and one of its five greatest Presidents. There is a curious coincidence in their careers, tastes and characters, so far as these are disclosed. Without asserting for them a significance they do not possess, the similarities are still sufficiently striking to command attention. Both were born April 13—Jefferson in 1743 and Davis in 1873—of Anglo-Celtic ancestry and frontier forbears. Jefferson came from a small mountain community on the east slope of the Blue Ridge, Davis from a similar settlement on the west slope, by air line less than 150 miles distant. Jefferson's mother, a Randolph, was a cultured and intellectual woman; his father, Peter Jefferson, a civil engineer and burgess, passed on to his son an intense democratic philosophy. Davis' mother, a Kennedy, possessed a fine mind and excellent education; his father, John J. Davis, a lawyer, legislator and ardent Jeffersonian, likewise bequeathed his beliefs to his offspring.

At the age of twenty Jefferson was graduated from William and Mary College; at nineteen, Davis was graduated from Washington and Lee University. Each subsequently studied law and achieved distinction in his profession.

Each began his public career as a member of the State Legislature, Jefferson at twenty-six and Davis at twenty-five. Jefferson entered the Continental Congress when thirty-three. Davis entered Congress when thirty-seven. In 1785 Jefferson was in Paris on a diplomatic mission when appointed minster to France. In 1918 Davis was in London on a diplomatic mission when appointed ambassador to Great Britain. After a period of public service each retired to private life—Jefferson upon resigning as secretary of state, Davis upon resigning as ambassador—only to be recalled three years later to renewed political activities.

In their personal characteristics other parallels appear. Jefferson is described by biographers as "an expert violinist, a good singer and dancer, proficient in outdoor sports and an excellent horseman." It is further recorded that he "never used tobacco, never played cards, never gambled and was never party to a personal quarrel." Herein differences develop. Davis, while a violinist, has closely guarded the degree of his proficiency, and possibly could not qualify as an "expert." Moreover he enjoys a philosophic pipe and now and then a cigar. Against the assurance that Jefferson was a "good singer," however, may be balanced the knowledge that Davis sang a mean bass in the Presbyterian choir at Lexington during college

days, and was one of two students who carried the baritone in the glee club. At college he boxed and played tennis. In Clarksburg they say "John always could ride." He plays golf like the average American, sometimes in threes and fours, and again in nines and tens. While he appears to have done a reasonable amount of dancing in his youth, he apparently never acquired the bridge habit. If he mastered a course of draw poker in college, the fact is not revealed in his ratings. Avoiding personal quarrels on his own account, he nevertheless once publicly whipped one of his father's political adversaries; and again, during the trial of a case in court, punched one of the elder Davis' legal antagonists on the point of the jaw. In each instance the attack was in retaliation for a slighting reference to the parent.

Politically Davis classifies himself as a Jeffersonian:

> "I am a genuine Jeffersonian Democrat. I think Jefferson was the greatest political thinker this country has produced, and I expect to die in that faith. If Jefferson's principles are true—and I think they are—then they remain true, even with changing times. Their application may change, but they do not."

Intellectual inclinations and a studious nature afford a further basis for comparison. For many years Jefferson was President of the American Philosophical Society. In 1922-23 Davis served as President of the American Bar Association, and while in London was made a Bencher of the Middle Temple. Jefferson's reading is said to have covered a remarkable range. In Davis' speeches may be found quotations from almost any author, ancient or modern, from Aristotle and his predecessors to Mark Twain.

Concerning Jefferson's temperament one of his biographers says:

> "Beneath a quiet surface he was fairly aglow with intense convictions and a very emotional temperament. Yet he seems to have acted habitually, in great and little things, on system."

Those who know Davis best declare the description fits him perfectly. There, however, the similarities cease.

II

It is a common saying around Clarksburg that "John W. Davis has been kicked into every offce he ever held." In the same category is the classic assertion of Dr. J. W. Johnston, the Davis family physician, that "John don't know a damn thing about politics and never did." Another of the same variety is that things have come "too easy" for him—the old story of Lady Luck. Like many such remarks, these are half-truths which permit inaccurate inferences. It so happens that in three specific instances chance or destiny—in the form of his friends—have yanked him by the scruff of the neck out of an active law practice and flung him headlong into the political arena. This occurred when he went to the Legislature in 1898, again when sent to Congress in 1910, and once more when nominated for President in 1924. To this extent fortune has smiled—if it is good fortune to be so maltreated. Against this, and representing an additional contribution to the truth, stands the fact that, having been "kicked in," his performance was such as to make luck an unnecessary adjunct of promotion.

His record as a lawyer would appear to preclude controversy. He was informally tendered appointment to the United States Supreme Court twice, first by Wilson and again under Harding. The late Chief Justice Edward Douglass White once called at the White House to express unofficially to President Wilson his own hope and that of associates on the bench that Davis might be appointed to an existing vacancy. On another occasion he remarked facetiously that "the court thinks so much of John Davis that when he appears for the Government the other side hardly gets 'due process of law.' " His election as President of the American Bar Association, supplementing the other developments, would seem to foreclose argument as to his standing in the legal profession.

As to his past life, it is related that a certain publisher sent one of his ablest investigators to Clarksburg to learn all that could be learned to his discredit. After devoting a week or two to the investigation, the reporter went in desperation to the opposition newspaper.

"Say," he demanded, "hasn't anybody got anything on Davis?"

"Damned if I know," the editor blandly replied. "We haven't."

There is, however, a blot on the record. As one of the "high crimes and misdemeanors" of his youth, it was discovered that he had never attended the little red school house in Clarksburg—if it were red. This is true. Nor was he born in a log cabin. Investigation reveals that he was ushered into the world in an unromantic frame house on Mechanic Street, Clarksburg,

and that his mother insisted on teaching him until he was ten years old.

A sense of humor may be traced to college days. An example which he has probably forgotten is contained in a letter addressed in 1915, while Solicitor General, to Samuel R. Bentley of Clarksburg. Bentley was trying to sell him additional life insurance, and had submitted a verbal proposal. The interview was interrupted before a final answer had been given. Accustomed to address each other as "John" and "Sam," Davis wrote Bentley as follows:

"Sir:

"I have all the life insurance that I want. In fact, I am now carrying more than I can afford. If I were going to take any more life insurance, I should choose some small, inconspicuous company with opportunities for growth, instead of one of the great bloated octopi which burden the business of the United States. These remarks are of course peculiarly applicable to your company, which I understand to be the largest and most odious of them all.

"With these preliminary remarks, if you will send me an application along the lines of your new proposal I think I can see my way clear to do something with it. Does your company dare show its goods in advance by way of specimen policies?

"I am, Sir, with sentiments of profound respect,

"Truly yours,

"JOHN W. DAVIS."

During the world war Davis delivered an extemporaneous speech in behalf of the Second Liberty Loan which so impressed Blackburn Esterline, an associate in the Solicitor General's office, that the latter had it printed for private distribution. A flood of flattering acknowledgments came from Cabinet officers, Federal officials, members of the judiciary, lawyers, financiers and captains of industry. One day Esterline bundled these up and sent them to Davis' desk for his perusal. They came back with the scribbled note:

John Davis, saddler, grandfather of John W. Davis, and founder of the West Virginia line, who moved from eastern Virginia to the primitive frontier settlement of Clarksburg about 1820

"B. E.—When George Bernard Shaw was called out for a curtain speech upon the first presentation of a new play, a gallery god voiced his disapproval by yelling 'Boo.' Shaw looked up and said, 'I agree with you, my friend, but what are we among so many?'—J. W. D."

When the so-called Five Per Cent cases were before the United States Supreme Court, Davis appeared for the Government on a certain Tuesday. On the following Monday the Court issued an order for a rehearing. John J. Fitzgerald of New York, counsel for the defense and a noted wit, gathered several other lawyers about him and called Davis over.

"Has to argue the case again," Fitzgerald bantered. "Can't make the Court understand what he's talking about!"

"Nothing of the sort," Davis retorted. "I got an encore."

An old negro in Clarksburg who in former years worked for the Davis family could always extract a quarter or "fo' bits" by remarking, on meeting him on the street: "Yassuh, us kinfolks's got to stick together."

Books behind glass look to him "like prisoners behind bars." He twists an old adage to excuse a habit of reading into the morning hours: "Late to bed and early to rise make a man—well, it agrees with me." At a state political convention in 1900 he was asked, "What is the secret of an orator?" He replied: "To know when to speak, when not to speak, and when to conclude."

III

In the ancestry of John W. Davis a considerable

intermixture appears. There are Welsh, English, Scotch, Scotch-Irish and Dutch strains—with the Scotch, however, distinctly predominant. Among his forbears were Covenanters, cavaliers and Quakers; carpenters, clockmakers, farmers, saddlers, printers, merchants, revolutionaries, and colonial land-holders. A sister of John W. Davis—Nancy, now Mrs. H. G. Richardson—has compressed the story into these lines:

> "The Covenanters through my father claim me kin,
> The cavaliers upon my mother's line;
> With me a jolly, laughing Irish strain,
> Smooths out the Covenanter's stern set brow;
> The Quaker holds the cavalier in check;
> I am a part of each—I know not how."

In the dim annals of antiquity the Davis line doubtless had its origin in the hills of Wales. Tradition says the family may be traced to the sturdy mountain Welsh who repelled the invasion of the Saxon king of Northumberland in the seventh century.

West Virginia is full of Davises, most of them of Maryland stock. A collateral branch traces direct descent from Thomas Davis of London, who came of an ancient Welsh family which had settled in Shropshire. He arrived in Maryland late in 1688 as a factor for several large mercantile establishments in London. Thereafter the names John, Rezin, and Caleb frequently appear in the Davis line. While family records fail to show a connection between Thomas Davis of Maryland and the family which produced John W. Davis, the evidence is overwhelming that such a connection exists. Early in the nineteenth century, a John Davis and Rezin Davis, the sons of Caleb

Davis of Woodstock, Virginia, joined the westward migration over the Northwest Pike and crossed the Blue Ridge to Clarksburg, then a settlement of some 300 souls. This John Davis, a saddler by trade, was the father of John J. and the grandfather of John W. Davis. He became sheriff of Harrison County and lived to see his two sons, Rezin Caleb and John J. Davis, enter the profession of law and as young men attain prominence. The latter was born in Clarksburg May 5, 1835, and died there in 1916 at the age of eighty-one.

Anna Kennedy Davis, the mother of John W. Davis, was born on Camden Street, Baltimore, November 14, 1841, the eldest of seven children, and came to Clarksburg at the time of her marriage. She died in 1917, at the age of seventy-six. William Wilson Kennedy, her father, was a lumber merchant. Her mother, Katherine Esdale Martin Kennedy, was a southerner, a daughter of Tobias Martin, who owned a dairy farm near Washington and wrote occasional verse. The Esdales, her mother's family, were Pennsylvania Quakers, living near Valley Forge, and helped provision Washington's troops during their desperate winter there.

James O'Donnell Bennett, writing in the Chicago Tribune, says of James Steen, the great-grandfather of John W. Davis on the paternal side, a carpenter, that he "was so strong that, by holding on by thumb and forefinger he could swing himself from rafter to rafter." In digging into the family archives, he produced this further bit of fascinating history:

"That great grandfather of the mighty thumb and forefinger was James Steen, an Ulster man who had emigrated from Scotland to Ireland. Coming into town one day he was about to be drafted into the English army. Vowing he would never take up arms against his adopted Ireland, he hurried back to his farm, sold all he had, and sailed at once for America. This was about 1793. He looked around in New York and Philadelphia and then took up the trade of carpentry in Washington. One of his jobs was to build the steps to the rotunda of the old Capitol—the one which General Ross burned in 1814. James finally went back to farming, settling in Morgantown, West Virginia, where he died in 1839 at the age of 70. Though he was a toiler he had a coat of arms, dating from before 1650, which was a Phoenix rising to the sun, the whole set off with the laudible motto, 'Ad diem tendo.'

"James Steen had married in Scotland the expert little talker, Jane Small, whom tradition connects with the Small brothers, Edinburg publishers, and with the family of the English diplomat, Sir Thomas Bodley, who founded the Bodleian library at Oxford in the sixteenth century. It is said, too, that Jane, specializing in talk by day, did all her reading after her family had gone to bed."

Another great-grandfather, James Kennedy, was foreman of the Globe Printing Office, in Washington. His son, William Wilson Kennedy, learned Spanish and Italian at the age of eighty. The Kennedys go back to the twelfth century in Scotland, where James Kennedy, a great-great-great-grandfather, an Inverness man, married Rachel Jennings, an Englishwoman. He was a follower of "Bonnie Prince Charlie." Compelled to flee Scotland, he escaped to Ireland and thence emigrated to America, locating finally in Baltimore and founding an American line.

These were the forbears of John W. Davis, sturdy folk all. Men are the sum of their backgrounds.

CHAPTER II

ENTER: A SON

I

There had been a big mail robbery in the West Virginia mountains. A train had been held up, the mail car dynamited and the safe looted of large sums in currency, stamps and securities. The Government put its best investigators on the trail. After long and diligent effort they closed in on the culprits. Arrests were made, the men were charged with the crime, and eventually brought to trial. The Clarksburg court room was crowded.

To make sure of obtaining convictions, the United States District Attorney, Flick by name, had summoned scores of witnesses. One after another they took the stand to identify the accused men and describe the robbery, forging a chain of evidence which seemed without a flaw. Although enormously fat, with the flesh rolling and billowing about him until he seemed submerged, Flick was a typical prosecutor, possessing nothing of the easygoing nature suggested by his physical attributes. Judge John J. Jackson, presid-

ing at the trial, had given him plenty of leeway, and he had made out a good case. The testimony concluded, the arguments followed.

Counsel for the defense, tall, slender and distinguished, with flowing beard and flashing eyes, arose to sum up the case and make his concluding appeal to the jury. Notwithstanding the character of the evidence, he was thoroughly convinced of his clients' innocence. To him they had sworn they had neither participated in the robbery nor possessed any knowledge concerning it. The lawyer waxed eloquent. Words poured forth in torrents as he argued, cajoled and pleaded for acquittal. He strayed into winding paths until the court grew weary, and interrupted with an admonition to stick to the law and the facts.

There was a hush in the courtroom. Then, slowly and distinctly, pointing a long forefinger at the great array of witnesses, the defendants' counsel said:

"It is hard for one man to contend with the world—"

Then, swinging the forefinger around to the prosecutor—

"—the flesh—"

And finally shaking it at the judge—

"—and the devil."

Those who heard it gasped. There was a hum of excited conversation. Spectators nudged and snickered. Judge Jackson, his face an apoplectic red, rapped for order and threatened the lawyer with punishment for contempt. The latter listened. Then with the same deliberation, and pointing as before, he spoke:

"Your Honor, I repeat, it is hard for one man to contend with the world, the flesh and the devil."

As he finished he faced about and pointed straight at the court.

Judge Jackson mumbled to himself, as eyewitnesses describe the incident, and turned to some papers on his desk. The argument went on without further interruption.

This is one of a score of stories told in Clarksburg concerning John J. Davis, the father of John W. Davis, for almost half a century a power at the bar and in the politics of his state. Perhaps no more romantic figure ever strode upon the stage of the mountain region where he lived. Although he passed away in 1916, his vivid personality persists. His colorful nature, commanding mien, and particularly that long, intimidating forefinger, figure in many a tale of a picturesque career. In his religious life, while a strict Presbyterian, he was, perhaps, more broad-minded than in his political views. With religious intolerance he could not sympathize.

He was an impressive figure, over six feet in height, slender and straight and bearded, stern of countenance, dignified in demeanor and chivalrous in conduct. There slumbered within him the fire of Celtic ancestors. In anger his eyes would flash and his whole figure assume a menacing aspect. Men hesitated to cross him, and if in disfavor approached in trepidation. Those who knew him best tell how his "beard would shake" —always accompanied by an oscillating, outthrust index finger pointing at the object of his disapproval.

His beard reached to his chest, and as age turned it to silvery white his appearance became patriarchal. In Clarksburg in his later years he was almost an institution. Seeing him approach in long black coat and soft gray hat, his fellow townsmen would say:

"There comes the old Jeffersonian."

Anna Kennedy, the Democratic candidate's mother, was a young woman of excellent mental equipment, and for those days had received an unusual education. When she met her future husband she had already graduated from the Baltimore College for Women, the second institution in the south to grant degrees to women. There she won her A. B. at a time when not one woman in thousands could claim to be a college graduate. Her marriage to the serious minded lawyer whom her culture and charm had attracted occurred in Baltimore August 21, 1862, when she was 21 and he was 27. They started at once for Clarksburg, as the war was then in progress and transportation was uncertain. They did not realize until later just how uncertain it was, for they reached their destination by a stroke of rare good fortune. Stonewall Jackson's cavalry had been raiding West Virginia and was close to Martinsburg. As the bridal party approached on the train from the east, the Confederate cavalry swept from the south. The train reached the city first and passed on westward. Within a few hours, Jackson's men were tearing up the rails.

John J. Davis brought his bride to his father's house, where he himself had been born. His law practice was small and fees not always collected. Years later he

would tell how his first year's fees as a lawyer exactly equalled the price of a beaver hat which hung on his office wall. But the courage of youth sustained them.

Those were seething times. Lincoln had just been elected, giving impetus to secession. When the storm of civil war broke, John J. Davis, a Unionist member of the Virginia Legislature played a leading role in the creation of the new State of West Virginia. The movement which resulted in the separation had its inception in Clarksburg and culminated in the admission of West Virginia into the Union in 1863. With the end of the war John J. Davis' practice and influence expanded. He was active in local politics. In 1868 he was a delegate to the Democratic convention which nominated Horatio Seymour of New York for President. Two years later he was elected to the West Virginia legislature. This in turn was followed by his election the same year to Congress. He served two terms as a member of the House of Representatives in Washington, from 1871 to 1875, in the Forty-second and Forty-third Congress. This was during the reconstruction period, one of the darkest chapters in American political history. In his second campaign he ran for re-election as an independent Democrat, refusing to support Greeley for President.

John J. Davis made no secret of his views at any time. A scrapbook in possession of the Davis family contains various documents to support the statement. In a letter, written from Congress, May 25, 1872, and published Saturday, June 1, in the Clarksburg Sun, he takes occasion to contradict a Washington dis-

patch to The Cincinnati Enquirer stating that he would support Horace Greeley. He wrote to the editor:

"I desire to say, and hope you will announce it, that said statement is in every particular false and without the shadow of foundation in truth. At no time either before or since his nomination could I support Horace Greeley. I should regard his acceptance by the Baltimore convention as disastrous to the Democratic party and sure to result in defeat; and if by any chance he should be elected, I should regard his election to the executive chair as a serious calamity to the whole country. * * *

"I am fully convinced that the only hope of defeating Grant is by nominating a straight Democratic ticket at Baltimore upon a platform of no equivocal character in its enunciation of the fundamental truths for which Democracy has always battled.

"I write hastily, having just perused the paper, and with the hope that you will correct this most outrageous falsehood in your columns.

"Truly yours,

"JOHN J. DAVIS."

In a postscript to this letter he adds:

"Under no circumstances will I support Greeley or any other Republican for President. If the Democratic party, unmindful of the traditions of the past and unfaithful to its high mission, shall conclude to commit hari-kari at Baltimore, I shall be no party to the outrage."

There is in these letters the same devotion to principle found in the letters of his son half a century later. Even the phraseology is similar, although the subject matter is of course unrelated.

Five daughters had now been born. They were Lillie, now Mrs. John A. Preston of Cincinnati; Emma K., of Clarksburg; Anna, called Nancy, wife of the Rev. H. G. Richardson of Yonkers, N. Y.; Moselle, who died in infancy; and Estelle, who died at the age of six.

On the evening of April 13, 1873, the mother of this brood—she who was Anna Kennedy—sat reading in the little house on Mechanic Street. In her hands she held the last volume of Gibbon's monumental work,

twenty years in the writing, "The Decline and Fall of the Roman Empire." She was rushing to reach the end, having reason for her haste. But the chapter was never finished. Closing the book with a smile, she summoned her husband. That night the word went round:

"They've got a boy at John Jeemes's."

They named him John William Davis, for the Johns on the Davis side and the Williams on the Kennedy. Having carefully chosen his parents, he had likewise elected to be born on Thomas Jefferson's birthday. There is some dispute in the family as to the exact hour of arrival; enough to gravely concern astrologers some 51 years later. One sister says he was born at nine o'clock, another that it was after midnight. His mother always contended it was twenty minutes to twelve, and her word will have to stand. The record shows she was present.

It was her sister who swaddled him, and, presenting the babe to his mother, announced in behalf of the family:

"He is a noble Roman."

CHAPTER III

CLARKSBURG, PAST AND PRESENT

From the heights of Pinnickinnick, where the guns of the northern army once thrust their threatening muzzles toward an advancing foe, the City of Clarksburg spreads its wares like a salesman showing his goods. In the narrow valley below it appears as a miniature metropolis, with toy-block skyscrapers rearing their bulk above the lower levels, and their lesser brethren crowding in to compete for the trade that is offered. A gabled and turreted court house, with the town clock in the tower, vainly aspires to reach the roofs of its more modern neighbors.

Main and Pike Streets—Clarksburg back in the forties was one of the larger settlements on the Northwestern Turnpike, from which the latter street takes its name—bisect the city. From east to west in parallel lines they run their race for commercial supremacy. Elk Creek wanders down from the hills and through the lower town, to empty into the West Fork River, a branch of the Monongahela. Clinging close to the hillsides or sprawling up the valley, clusters of clean cottages fringe the town about. To the West

a group of smokestacks pour their smudgy waste into the clean air.

On a summer's day the tumbled hills stretch off in hazy horizons; in fainter and fainter blues until lost as they merge with the sky.

If you spend a week in Clarksburg you will learn that it is a bustling, prosperous city of some 30,000 inhabitants. It is proud of its numerous churches, its fireproof schools, its playgrounds, stores, country clubs and industries. Coal, oil and gas have brought population and wealth to its door. Its city manager points with pride to the sewage disposal plant, and its youth to the nightly glitter of a lengthening white way. On the balcony of its best hotel, overlooking the lobby, you may dine in Broadway style for a very moderate fee. The Masonic temple and Elks Club are among the larger limbs of the community tree, while the Rotary, Kiwanis, Lions, Ad, and Quota clubs branch out through its business life with friendly, fraternal foliage.

A hustling Chamber of Commerce—"Clarksburg, in the Heart of Things"—boasts of its hundreds of members. On public occasions it turns them loose to put Clarksburg on the map.

Downtown eating places abound, from the one-armed Ladies' Lunch to the more pretentious places on Pike Street.

Bill McGowan's Chop House stands at the brow of the hill on Pike Street. Bill "worked on the Sun with Dana."

"When Dana died it made no difference on the

Sun," he will tell you, "but when Laffan died it just seemed to disappear."

With a far-away look in his Irish eyes he recalls that Richard Harding Davis was a member of the Sun staff then, as were Arthur Brisbane, Jake Reis, and Helen Watterson. Davis, he thinks, consistently wrote the best stories, although Brisbane's stuff was clever.

At dawn, from your hotel window, the view is obscured by a heavy haze which, swung from the crest of the ridge, spreads like a coverlet over the quiet town. The mists rise with the sun, and the hills step forth like sentinels to again take up their watch. Sometimes at dusk a single shaft of smoke will lift itself lazily into the upper atmosphere, and, seeming to spring from one of the peaks, spread a volcanic plume against a glowing sky.

Then comes the night, with its incandescent flowering. It is then that Pike street proves its supremacy over its rival. Main Street may have its banks, but Pike Street has its lights, and claims the right to revel. Through theatre doors drift the strains of a mad, moaning orchestra, jangling a fearsome melody that has in it the "Bells, bells, bells, bells, bells, bells, bells" of the poet Poe. Revelry reigns until slumber calls and the city seeks its rest.

Such is present-day Clarksburg. Here it was that multitudes flocked when word was flashed over the nation's wires and ether lanes that John W. Davis of West Virginia had been nominated for President of the United States.

But it was not a modern industrial city in which John William Davis arrived in 1873. It was a pastoral community of some 2,000 souls, the trading center of the grazing and farming region roundabout. Farmers and small merchants, country bankers, laborers on the railroad, made up its population. Its social life was simple, revolving around the churches on the one hand and the barrooms on the other.

Thomas W. Tinsman, hale and hearty at 78, who lives across the street from the Davis homestead, came to Clarksburg as a child of two, in 1847. It was then a settlement of some 300 persons. In those days the farmers of that section drove their cattle and hogs to Baltimore in droves of 1,000 head. If cattle brought two cents a pound in the Baltimore market they felt they were well paid. A regular stage schedule was established about that time, with stations every ten miles where horses were changed and passengers given a brief respite from the joltings of the mountain roads.

When the railroad came through in 1856 the community entered upon the second phase of its development. New settlers came from the east, the timbered slopes were denuded and the land more widely tilled. In its essential character, however, it remained unchanged. It was still a rural settlement. There were no industries other than those required to supply the wants of the local population.

Money was scarce and life, if not hard, was far from easy. It required frontier thrift to raise a family and keep the wolf from the door. The town remained within the Union lines during the war, and thus es-

caped unscathed. As its nearest point of approach, the Confederate cavalry got as far as Bridgeport, five miles east.

One of the inhabitants of that mountain village was Squire Emanuel Benedum, who died in 1909 at the age of 92. A report reached the community that the raiders were in Fairmont and headed for Bridgeport. This was on April 30, 1863. Almost on the heels of the message they thundered across the bridge into the town. In a few minutes they were in front of Benedum's house. In this brief interval he had seized a piece of chalk and scrawled across the door "For Rent." The ruse failed to deter the raiders from making a personal inspection. A loud knock came at the door. Squire Benedum, according to local historians, flung a shawl over his head, and peering out inquired shrilly:

"Has your company ever had smallpox?"

He was not molested again! This story illustrates the quick wit of the mountaineers who settled Harrison County.

For the most part the early clients of John J. Davis were farmers. The law practice of those days related largely to land titles, boundaries, property transfers, condemnations and trespass. He was 38 years old when his son was born, a leader in the religious and political life of the town, and one of the two best lawyers in Clarksburg. The other was John Basel, who studied law in his office and later became his rival. But though his practice was growing, fees were small and a lawyer's income meagre. Even some twenty

years later, when the son entered practice in partnership with his father, an office consultation brought only a dollar. Fifty or a hundred dollars represented a good fee for seeing a case through court to a decision.

So the Davis household, though not a large one for that clime and period, knew no luxuries. The eldest daughter, Emma, remembers when her entire wardrobe consisted of two gingham dresses, one for Sundays and one for weekdays. In the shed back of the house there was always a horse. "John J." practiced law in several northern counties. His acquaintance and influence were steadily expanding. It was necessary to have a "horse and rig" to get around and attend court in the different districts.

His election to Congress for two terms enabled him, by careful conservation, to save enough money to build a larger house, the one that now stands on Lee Street. On moving day the furniture was piled high in a wagon, the young son of the household perched himself on the top, and the caravan started for the new home, built in what was then a cow pasture at the edge of town.

Here in his boyhood home John W. Davis was welcomed by neighbors when formally notified of his nomination. And it was here that the fibre of Mother Kennedy found expression in her son.

CHAPTER IV

A MOTHER WITH A MISSION: EDUCATION

"MOTHER loved an argument!"

This testimony of the daughters of Anna Kennedy Davis is one of the keys to her character. Another is found in four words from the same authority:

"Study was her life."

With this as a starting point, there is a clear avenue of approach to the atmosphere of the Lee Street household, and to an understanding of the influence that, more than all others, shaped the early life of its son. Anna Kennedy Davis lived for her children. She guarded, guided and at times goaded them. She had definite ideas, and a nature sufficiently positive to put them to the test. One of these ideas was that with intelligent instruction a child will go farther and faster if he studies at home than he will if sent to school. Accordingly, in their earlier years she personally undertook her children's education. To keep her mind refreshed, as well as for her own satisfaction, she herself constantly studied, not haphazardly but systematically, and with an objective always in view. And she forced her children to study.

But best of all, when not reading, studying, teaching her children, canning fruit or attending to numerous other duties, she enjoyed nothing more than a good old-fashioned argument. The depths of her nature responded to a challenge to verbal combat. Furthermore, she knew her facts and how to present them. Her reasoning was sound and her logic unanswerable. Miss Emma Davis says:

"She would let you argue your case without interruption. Then she would eat you up! By the time she got through, there would be nothing left."

Long before prohibition and woman suffrage became an accepted part of the social scheme, Anna Kennedy Davis was an advocate of both. She took an active interest in community affairs, found politics absorbing and never failed to follow the day's news. Her versatility seemed to know no bounds. In spare moments she was painter, pianist, writer of verse. A poem on "The New Woman" was part of her poetic output. She sudied languages throughout her life. Fluent in French and German, she possessed also a scholarly knowledge of Latin and Greek and a smattering of Spanish and Italian. In her closing years she took up the Hebrew tongue as an aid to Biblical Exegesis. But these things were diversions. Her major interests, always, were her husband and her home. After that, in the words of her daughters: "Study was her life."

II

Back in the 'seventies and early 'eighties young

John Davis was regarded in Clarksburg as a normal boy. Given a good mind, a good body, good influences and good training, and assigned to the tasks that taught him life's fundamentals, he steadily grew in stature and in favor with his fellows. But none of those who knew him looked upon him as a genius. He was never considered precocious.

His mother started to teach him Latin at the age of eight. Other languages were later superimposed. The use of good English in conversation was always insisted upon by the parents. He was early encouraged to think for himself. His problems were largely left to him to solve. If he erred, his mistakes were explained. Often when the children would ask questions, Anna Kennedy Davis would reply: "You are old enough to figure that out for yourself."

Books were everywhere. The daughters all say now: "We cannot remember when we could not read."

In their earlier years the children received the same instruction from an intelligent and conscientious mother. Her Scotch inheritance was clearly revealed in the emphasis placed upon education. Many years later, John W. Davis was to say in addressing the Scottish-American Association in Edinburgh, while serving as ambassador to Great Britain:

"Wherever the Scotchman has gone, his watchword and shibboleth has always been 'Education! Education!' He has made an unceasing effort to hand down to future generations all the wisdom accumulated by the fathers, and to inspire that generation with an

ambition for further advances of its own. It is the only sure path of human progress.

"To America, education is something more even than that. It is the sine qua non of our national life. All governments resting upon popular sovereignty succeed or fail in proportion to the intelligence of the electorate."

Thus was the mother mirrored in the mind of her son.

The rumor cannot be confirmed that the infant John was born with a book in his hand, nor can the story be sustained that his first words were a quotation from Edmund Burke. Nevertheless his education must have begun before he came into consciousness that such a thing had happened, for he, like all three sisters, seems always to have been able to comprehend the printed word.

For the first ten years of his life his formal education was planned and personally directed by his mother. A study room was set aside for all the children in the Lee Street house, where, in some subjects, they studied on regular schedule. As they grew older they were permitted to leave the room and study elsewhere about the house—but always they had to study, and the lessons were far from easy.

His English compositions at the age of ten show a growing facility in the use of English and a developing capacity for condensation. As part of his English exercises he was required to be concise in everything he wrote.

"Condense—condense—condense!" was a cardinal

rule of the classroom. This practice possessed no appeal for John J. Davis, who was perhaps a shade less logical than his wife, and certainly less concise. He liked to round out his sentences, to pad his paragraphs, and regarded rhetorical phrases with an affection born of long indulgence. He would sometimes remonstrate with her for insisting on constantly cutting—cutting—cutting!

"You are cutting the soul out of it!" he once exploded, while she was directing her son.

"John," she replied, "I want to make him positive —brief—concise."

So the son "boiled down his copy" as many a cub reporter, until by habit he become explicit in expression. His briefs, Supreme Court arguments, state papers and public addresses years later were to demonstrate the result of this early discipline.

By the time he was ten years old, John had progressed so far in the subjects included in the home curriculum that he did not fit into the public school scheme. He was advanced beyond his years in the elementary studies, and in addition was well along in Latin. His mother, however, recognizing the necessity of broadening his training and throwing him into contact with boys of similar age, cast about for a solution of the problem. There was then being organized in Clarksburg, by Professor George Craig, a coaching class for the youth of the community who desired to teach school, but who required additional instruction to enable them to pass the teachers' examinations. This class comprised some twenty-five pupils of both sexes

Mrs. John J. Davis, the mother of the Democratic candidate, whom he strongly resembles. She was a leader in the religious and intellectual life of Clarksburg for many years, and found time in the midst of household duties to personally supervise the early education of her several children

ranging in age from fourteen to eighteen. John Davis was the youngest in the group. The course included Latin, mathematics and grammar. At the close of the school year, Professor Craig, astonished at the boy's progress, asked his mother to permit him to take the customary examinations for a teacher's certificate, assuring her he could pass, although still only eleven. She declined to permit it and when the class disbanded at the end of the season he resumed his studies under a young Virginian, Daniel Lucas Beddinger, who had come to Clarksburg to tutor a class of boys who were preparing for college. John entered the class at the age of eleven, again as the youngest member.

Beddinger's class lasted a year and then dissolved. There followed, for young John Davis, his first contact with large numbers of his fellows, in a school conducted by Professor Charles Edward Young, an uncle of Dr. Hugh Young of Johns Hopkins University, who had come to Clarksburg from Kentucky. He organized a boarding and day school with some sixty or seventy-five students. A staff of several teachers instructed them in algebra, geometry, Latin, English and music.

While this marked the end of his Clarksburg schooling, it leaves the picture incomplete, for during these years, whenever circumstances made it possible, he accompanied his father on the latter's trips through the country roundabout. An unusual companionship and deep attachment existed between father and son, and the boy would go down to his father's office and stay by the hour. Because John J. Davis was sensitive about his speeches, he would never permit other

members of his family to attend meetings which he addressed. John alone of the family circle, therefore, was his father's companion outside of the household. Through these contacts, by process of absorption, he learned the rudiments of politics and acquired a familiarity with public affairs from a master of both subjects. The practical importance of this contribution to his education, as well as its influence upon his future, cannot be fully assayed. Beyond that lie the imponderable values of an association that must have been to a plastic youth as the sun to the growing grain.

CHAPTER V

BOYHOOD BACKGROUNDS

Diligent efforts to discover some difference which distinguished the boy John from youthful associates discloses but one point of divergence.

"John always used a little better English than the rest of us," say those who ran with him then.

In the boyhood group in Clarksburg forty years ago the color lines would sometimes overlap, and black and white would fare forth together on juvenile adventures. Will Washington was one of the dark-hued boyhood associates of young John Davis. Others in that boyhood group were Bob Monroe, Charles Craig, and Ralph Holden. Will Washington's family lived in a shack just back of the Davis place. The boys were much together.

When you ask about him in Clarksburg, Washington proves elusive. A group of negroes on the court house steps at last supply a lead.

"Will Washington?" they repeat. "Don' know as I know him."

Then—

"Oh! You mean Bill Coon! Yes, I know Bill Coon.

Ain't seen him round here, though. Try down around the pool room. Sometimes he hangs out there."

Walking a block to the pool room you inquire for Bill Coon.

"Bill Coon? He left here 'bout twenty minutes ago," you are told. "Don' know where he went. Mebbe round the corner."

Innocently enough, you ask:

"Where do you mean? Is he working?"

"No, Bill Coon ain't workin'. Jes' hangin' on the fence."

But Bill Coon "ain't hangin' on the fence," and a search party is sent out. Found eventually, he adds his contribution:

"Yes, I knows that gentleman. I lived on Lowndes' Hill. Used to jes' jump the fence and be in the Davis yard. Yes, he used to go swimmin'. Watched 'em butcher hogs, too. Went fishin' with him. I'd use his pole lots o' times, over on the Slope. Yes, guess his mother would let him.

"Always had a lot of dogs around the house. Used to fly kites on Lowndes' Hill. That gentleman taught me how to throw a curve! Alley back of their place. I knows him and he knows me. Whenever he comes to town, if he sees me he steps out from the crowd and shakes my hand. An' if I has time, I always asks him fo' a piece o' money. An' I always has time!"

This last comes with a chuckle.

Here should be introduced the story of young John's first business transaction as narrated by Dorsey W. Cork, known as the shrewdest horse trader in those

parts. He puts his feet on the desk and tips back the swivel chair.

It seems that an Indian pony came through Clarksburg when John and he were about twelve years old. This pony had a colt, spotted black and white. To youthful eyes it was the most beautiful pony in the world. By long and tedious process, saving his pennies and nickels, Dorsey had accumulated a total capital of fifteen dollars. With this sum he purchased the colt and named her Katie. A friend of young Cork's father, who lived on an Indian reservation in the west, saw the animal and admired her, and when he returned west sent the youthful owner a gorgeous saddle with beaded trappings reaching almost to the ground.

One day as Katie was tied to a hitching rack on Main Street, John J. Davis appeared. His son had begged for a pony, but money was tight, and he shook his head when Dorsey named a price. Cash was too scarce, families were expensive, and ponies were luxuries. A short time before, however, John J. Davis had given his son a heifer. The heifer was two years old. So was Dorsey's pony. That started a train of thought. A few days thereafter young John came down to see Dorsey. He proposed to make a trade.

"John always was persuasive," the narrator recalls.

Dorsey was unconvinced but went to his father and asked what a heifer was worth. The latter told him a good heifer ought to bring fifty dollars. That was a lot of money and Dorsey was sorely tempted. At last they reached an agreement. Dorsey was to take

the pony to the Davis farm on the edge of town where the heifer could be seen. On the day agreed upon, the elder Davis hitched up the buggy, young Dorsey climbed aboard the pony, young John got in with his father, and the procession started out. As Cork tells the rest of the story:

"I was barefoot. On the way out I figured I ought to get a pair of new shoes out of the deal. So I asked five dollars to boot. I remember John J. said, 'Not one-sixteenth of a mill.' I didn't have the slightest notion what a mill was, but I saw I wasn't going to get any cash. Well, we reached the farm, and they brought out the calf. John's father went over and sat down on the porch of the log house. John was talking calf. I was talking pony. I couldn't make up my mind. Finally I said, 'All right, I'll trade!'

"John got on that pony's back and disappeared in a streak of dust. When I realized the pony was gone,—well, it gave me a funny feeling. And you can say for me that John got the better of the bargain!"

Those who know Cork all agree that this is a genuine compliment.

Other boyhood stories come from various sources in and around Clarksburg. Leading citizens of the city, pleading immunity under the statute of limitations, confess that Ben Stout's peach orchard back on the hill suffered from numerous raids, and recall that young John was among the raiders. Then there were fishing trips down on the Slope, as the runway at the Old Point flour mill on the West Fork river was called. John sometimes went along, too, when the crowd would

slip away from town and go out to see John Steele butcher hogs. Steele was proprietor of the Old Point mill. Bert Rapp remembers that one of the hogs weighed 700 pounds.

Hare-and-hound was a favorite game, and the boys would overrun the town and surrounding hills. Toward dusk strange thrills were found in running through the graveyard. This crowd, according to Rapp, included John Davis, Howard Holmes, Ralph Finell, Harry Smith, Bob Shuttlesworth, and Ed Davis, a cousin of John's. In the winter coasting and skating were favorite outdoor sports. Main Street hill was the coasters' delight. There was competition for girls, and the boy with the fastest sled usually got his choice. "Store sleds" were unknown, and those in use were of home manufacture.

Thomas W. Tinsman, whose little hillside carpenter shop overlooked the Davis pasture, where the new home was built, tells how two of the children, Nancy and John, would come over when very small and play there by the hour. They would build things with the lumber scraps, curl shavings around their ears, and sometimes—in fact, quite frequently—scatter them about the place. Their mother, coming for them, would say:

"Mr. Tinsman, when John and Nancy scatter shavings about, make them pick them up."

Tinsman would smile and reply:

"Just let them come over to see me. I'm always glad to have them."

As a contribution to their happiness, Mrs. Tinsman

would present her small visitors with huge slabs of homemade bread, thickly spread with jam, which they earnestly devoured. To vary the program of play, their accommodating host would present them with a hammer and double handful of tenpenny nails. Clutching those tightly, they would slide down a high clay bank on which the shop then stood, and proceed to pound them into its hard-baked surface. All summer this would continue until the bank was filled. But the nails were never lost, for each spring the rains would wash them out, and the thrifty carpenter, scooping them up, would have a fresh supply.

One of young John's early ventures was the organization of the East India Trading Company, since dissolved. Another incorporator was B. Frank Hornor. In its flourishing days it operated a fleet of boats in a ditch that bordered the Davis lot at the lower end—now Lee Street. Miss Emma Davis once appeared before the Clarksburg city council to oppose a proposed improvement that would have affected the homestead.

"You wouldn't close a navigable stream, would you?" she asked, with a trace of a smile.

"Navigable stream?" the city officials countered.

"Yes," she replied. "That stream has been navigated for several years by the vessels of the East India Trading Company."

With a laugh the councilmen tabled the proposal, and commerce was not disturbed.

When John was about twelve, he and several companions built an "observation tower" in the sawed-off

branches of a dead apple tree in the garden of Colonel John R. Boggess, at Fifth and Main Streets. It was five or six feet square, and open at the top. One of the boys procured a telescope, and there they studied the stars.

It was about this time, too, that John took his first flyer in journalism. Malden Adams and J. Hornor Davis had established a paper called The Star, which they edited in the haymow of young Adam's uncle, W. P. Holden. It was written in longhand, sold for a penny, and its circulation was limited to the family circle. Nevertheless, the enterprise shortly resulted in the establishment of a rival paper called The Comet, edited by John and Nancy Davis, which went to press more or less regularly in the haymow of the Davis place. The editors of the two papers placed each other on the exchange list, and so were seldom scooped. For lack of interest or patronage, The Star and The Comet finally flickered and died, like many another.

Any one spending more than a day or two in Clarksburg for the purpose of learning at first hand something of the boyhood life of John William Davis must become impressed at once with a somewhat peculiar phenomenon. The feminine portion of the community pictures him as a boy who was always cleanly washed and prim, remaining close to his home, while the masculine associates of his youth describe him as "a regular boy." It is the contrast between the portrait drawn by Mrs. Caroline James, a slender, aristocratic little lady, with white hair and snapping eyes, who taught him in Sunday school and has known him all his life,

and that of J. Hornor Davis, Bert Rapp, Bill Coon, and many others. Mrs. James asserts:

"He was always a wholesome boy. He had a noble face, even when very small. There isn't a blemish in him, and there never has been one."

On one point, however, they all agree. He never got into scrapes, and there were no escapades that require censored treatment.

II

Corporal punishment was seldom applied in the Lee Street house. Miss Emma Davis explains the disciplinary system thus:

"Mother adjusted the punishment to the individual. She fitted the burden to the back."

In other words, she employed practical psychology in the raising of her children. Nancy was oftenest spanked. Emma remembers having been spanked but once. In the case of the only son the record is indistinct, but the evidence indicates that, like the other children, he was chastised occasionally in the regulation manner. With him, however, a more effective punishment was to put him to bed in the daytime. The echoes of a boyish treble still haunt the halls of the almost empty house:

"Oh, Mother—please—please don't put me to bed—I won't do it again—please, Mother—please!!" But such appeals were vain.

There were always chores to be done. The only boy spent many a weary day weeding the long brick

John W. Davis, age seven and one-half. Note the high, square forehead, the observant eyes, even at this tender age

John W. Davis at the age of fourteen, ready for Pantops Academy

walk that passed in front of the place. The cows had to be driven in from the pasture, the garden had to be weeded, there was wood to be cut and water to be carried. In the days before Clarksburg had a water system, all of the drinking water used in the big house was brought from a spring at the foot of the slope. John, being the only boy, was assigned to perform this labor. He would burst forth in protest:

"I'm tired loafin' down the hill for water."

When the parents vetoed swimming it brought another wail:

"I wish I were twins. Then I could go swimming, and you wouldn't be so afraid something would happen to me."

Studies were often irksome. The daughters testify:

"John would twist and squirm and fuss over his lessons if he wanted to do something else. But Mother kept us at it. That was one thing we were not allowed to neglect."

Early in life John W. developed a taste for music, and was given a violin. For a time he took lessons from an old professor, Mackroth by name, who likewise taught him German. The instrument was not displayed outside of the household, but neighbors would hear it, and sometimes see the boy musician in the yard, playing beneath the trees. Eventually it was relegated to his room, there to remain. There are few who are able to estimate the extent of his musical talent or tastes. Dorsey Potter of Clarksburg, one of his chums, would say in later years when John would get down the fiddle: "Put that damned thing away."

John would sigh and obey. But Potter cared nothing for music and was not a competent judge.

Song festivals were part of the family routine. John J. Davis would lead the singing in a clear, high voice. Hymns and ballads comprised the programs on these occasions.

In the evenings the kerosene lamps would be lighted and books would come down from the shelves. Each to his own liking, they would go exploring, roam the world in search of romance, walk with the heroes of history, swagger with its swashbucklers, consort with its Caesars, or sit at the feet of its teachers and philosophers. In childhood days Tom Sawyer and "Huck" Finn took them adventuring, or they slaughtered Indians and buffalo with Fenimore Cooper. Then came Dickens, Thackeray, Scott, Dumas, and Hugo.

The bookshelves overflowed with the best in literature and history—Stevenson, Poe, Browning, Macaulay, Humes, Motley, Prescott, Carlyle, Burke, Gibbon, Parkman, Guizot, Maspero, Shakespeare, the works of Calhoun, the complete works of Thomas Jefferson. John J. Davis would frequently read Burke to get himself in the proper mood for a speech. His rhetorical style was not dissimilar.

The Bible and shorter Catechism were drilled into the children until they knew the one intimately and the Catechism by heart.

When the others had all retired, John J. Davis would settle himself in a green armchair beside the library lamp, a pile of books beside him, and read far into the morning. This was a lifelong practice.

A text he always favored appears on a clay plaque on the library mantel. It shows a humble cottager reading to his family. Above is the title: "The Cottar's Saturday Night." Below are these words:

"From scenes like these, Old Scotia's grandeur springs."

CHAPTER VI

"BONES" DAVIS — COLLEGE DAYS AND LAW

Pantops comes from the Greek, and means all-seeing. In the days of its pride, Pantops Academy stood on a hill overlooking Monticello, the historic home of Thomas Jefferson near Charlottesville, Virginia. Below and between, the rippling Rivanna River wound its way toward the sea. But though Monticello survives and the river continues its course, Pantops long since has passed to its reward.

There was no note of eagerness in the departure of John William Davis, on a brisk autumn morning in 1887, to enroll as a student at Pantops. While welcoming the appearance of a new phase in his education, it was almost with physical pain that he left the house on Lee Street. With a suggestion of wistfulness, his sisters conjure the scene:

"When John went down the steps to leave for Pantops he walked sidewise, like a crab." Utterly homesick, he started alone, a gangling boy of fourteen, on the new adventure.

"Bones" Davis—as he was promptly dubbed—was accepted at once by fellow students. In the succeeding

two years, covering his attendance at Pantops, he not only completed the college preparatory work for which he was sent, but entered spiritedly into the life of the little academy. Three episodes of this period are preserved. One relates to the organization of a fraternity ushered into the academy circle under the mysterious designation "S. U. V.", the second to another adventure in journalism, and the third to an incident that taught him the value of physical prowess.

Few fraternities then existed in the smaller educational institutions of the country, and when the "H. O. M." appeared on the campus, it created a stir among the students and, being exclusive, aroused immediate resentments. When, in addition to withholding all information concerning its purposes and meetings, its members declined to divulge the meaning of the cryptic initials, a retaliatory course was decided on by opposition leaders. Without revealing their purpose, they proceeded to organize the "S. U. V.", with nine charter members. To "Bones" Davis, whose scholastic equipment had earned the respect of associates, fell the task of drafting the constitution and by-laws. With their completion and adoption, a new fraternity was launched upon the student seas, and soon surpassed its rival.

An aptitude for English, exhibited in the output of a facile pen, brought the young West Virginian an opportunity to join the staff of the Pantops "World," which, in association with Andy Woods, he edited during the remainder of his term at the academy. As a further contribution to his education, he took his first

and last sound thrashing in physical combat from a fellow student. Although younger than his classmates, young Davis was large for his age. Sizing him up, a company of students seeking excitement demanded one day that he don the gloves with one of their number of about equal size and weight. His dilemma was difficult, for he knew nothing of boxing, and boyhood fights had been few. Against this was balanced the certain knowledge that if he refused to fight he would be considered "yellow." Accordingly he agreed, the combatants squared off, the signal was given, and the fight was on. "Bones" failed to land a blow. His own account of the battle relates that he was "hammered up one side of the hall and down the other," until his opponent desisted. It subsequently developed that the latter was a trained boxer, and that his victim had been lured into the one-sided bout under gross misrepresentation. He profited nevertheless, and in time became a skilled boxer.

At last Pantops had given him everything it could in scholarship and association, and at sixteen the maturing youth stood at the threshold of a college career. From the academy at Charlottesville to the serene and stately precincts of Washington and Lee University, at Lexington, was figuratively but a step, and after a summer at home, autumn found him again at his studies. With his credits in languages and mathematics he was admitted as a Sophomore, and entered at once into the life of the university, which then had an enrollment of under three hundred. Students of those days say it was worth a trip to Lexington to see its

president, General George Washington Custis Lee, the son of General Robert E. Lee, greet a feminine visitor on the campus. Perhaps half a block distant the distinguished figure would slowly raise his hand, remove a high silk hat with the same deliberation, gracefully bow as he passed, and, reversing the procedure, replace his unvarying headgear. The whole process would consume a minute or more, instead of the five seconds or less ordinarily devoted to the same salutation. To a considerable degree the university reflected the leisurely culture and contemplative outlook of the ante-bellum South. Scholastic values were stressed and faculty members found time for individual instruction and contacts with their classes.

As there were no dormitories, instructors and students alike roomed in Lexington, a small southern college town, and joined in its affairs. "Bones" Davis secured a room at the home of the Rev. D. C. Irwin, a retired Presbyterian minister. That same night Sam Holley, a young Kentuckian, called in quest of accomodations. Thrown into contact, they agreed to bunk together, and for three years thereafter were inseparable companions. The friendship thus formed has persisted to the present. Three other Kentuckians, Marion and Jim Ripy and a commpanion named Forsyth, roomed at the same house. For six months, when not engaged in their studies, the five youths held high carnival. At the end of that interval their clerical host invited Davis and Holley to leave. They complied with alacrity, moving into the home of Dr. James J. White, professor of Greek at the university, a

scholarly and dignified pedagogue who is remembered affectionately by former students. After this, for a further period of six months, they lived at the home of Major Francis H. Smith.

These three years, from 1889 to 1892, were marked by a series of scholastic achievements testifying to seriousness of purpose and earnest devotion to studies. Without becoming a bookworm, he managed to graduate in Latin and win a scholarship in English the first year, earn a scholarship in geology the second year, and at the end of the third year graduate in all academic subjects with the degree of A. B., thus completing his collegiate work. His popularity with classmates was attested by his election as secretary of the Class of 1892. The class president was W. E. Darnall, who eventually settled down to the practice of law in Atlantic City, New Jersey.

Nor were musical interests neglected during college days, for he sang in the Presbyterian choir in Lexington, and in the university quartet and glee club, later becoming its President. Among almost a score of voices in the glee club there were only two baritones—"Bones" Davis and Bill (William F.) Kurtz. Between them they carried the first bass parts while the others took the tenors and " heavy" bass. There is no record of the violin at Washington and Lee, and it appears to have remained encased at Clarksburg throughout his college days. Soon after enrollment he was pledged by Phi Kappa Psi, then the largest and most active fraternity in the university, and became one of its leading spirits.

His participation in athletics, which were not emphasized at Washington and Lee, appears to have been somewhat limited, although he boxed, played tennis, and was a member of the fraternity football team. His father, unfamiliar with the relative hazards of the two games, said when he left Clarksburg to go to college:

"John, I don't want you to play baseball. Play football if you wish, but not baseball. It is too dangerous."

Obedient to the parental injunction, as well as his own inclination, he passed up baseball for football.

That he was fond of feminine society is testified by Harrington Waddell, a member of the Class of '92. Under the elective system then prevailing at Washington and Lee, the students took what studies they wished. Applying the same formula to their social life, they "took calico" or not, as they preferred. Mr. Waddell, who was to become principal of the Lexington schools, is authority for the statement that, in common with most of the students, "Bones" Davis "took calico." He remembers him also for his ability to say much in a few words, and as enjoying the regard of fellow students. His honors came unsolicited, and it is recalled that he was never a candidate for office.

Another estimate comes from E. G. Smith of Clarksburg, who graduated in law at Washington and Lee in the same year (1892) that his fellow townsman received his A. B., and thus observed him through the eyes of an upper classman. He describes him as a good student, of clean personal habits, popular and industrious but never spectacular, and one whose fro-

lics did not run to license. This is confirmed by Professor S. T. Moreland, a former President of Washington and Lee and later a member of the faculty of the University of Tennessee. Following the nomination of his former student in New York, Professor Moreland was quoted in newspaper dispatches as saying he was neither distinctly mischievous nor unusually bright; but "extremely cleancut."

In those days one of the wildest pranks of the students was to slip out on a dark night and apply a coat of bright red paint to a statue of George Washington which adorned the campus. This did not occur often and it does not appear that "Bones" Davis was ever involved, although the statue was given a red bath at least once while he was a student. In chapel the next morning General Lee, with the utmost gravity, observed that he had been painfully grieved to learn that some member of the student body had so far forgotten himself as to dishonor the memory of the Father of his Country, and that he was sure the act was the result of thoughtlessness and would not occur again. The offense was not repeated.

Vacation intervals during this period were spent in Clarksburg. Returning home, the college student would resume his place in the Lee Street circle and participate in such social diversions as the town offered. The youth of the community found many a thrill in serenading parties, and there were occasional excursions to Broaddus Female College on the banks of Elk Creek, at the edge of the city, to serenade its willing occupants. The practice offended the disciplin-

ary ideas of "Blinky" Lyons, the one-eyed principal, who, thirty years afterward, is described by participants as charging out of the school with bathrobe flying, vowing vengeance on those whom he caught. By way of variation, the serenaders would carry boxes of candy, and slipping through the shadows, tie these to strings lowered by excited young women from the upper windows of the dormitory, unknown of course to their chaperones. The confections would thereupon rise and disappear within. Bert Rapp of Clarksburg testifies concerning these expeditions:

"Many was the time John Davis and I hid back of the shrubbery at Broaddus, John behind one bush and I behind another, with 'Blinky' only three or four feet away, looking for us!"

But like Pantops, Broaddus is gone, at least from Clarksburg, and "Blinky" Lyons with it. In the early 'nineties one of the favorite haunts of the younger group in Clarksburg was the home of Major Lee Haymond on West Pike Street. The major was hospitable, there were no clubs in town, and youths of college age made it a rendezvous, styling it "headquarters" and themselves the "headquarters crowd." Young John Davis—never "Bones" at home—was one of the active spirits of this group, which comprised a dozen or more congenial companions. Among the others were the late Carl Vance, a cousin and for many years his most intimate friend and political associate: B. Frank Hornor, Lynn S. Hornor, Lyle Smith, Will F. Freeman, Melville Jarvis, Hugh Jarvis, Cyrus Earl Vance, Ed. Bassel, J. Hood Hornor, and Howard Holmes.

Two members of the crowd, B. Frank Hornor and Ed. Bassel, owned a wierd flat-bottomed craft called the "headquarters boat," which, anchored in Elk Creek back of the Haymond place, was used for outings on the West Fork river below town.

II

Before returning to Clarksburg after three years at Lexington, the youthful graduate had reached two important decisions affecting his future. One was to study law. The other was to do so on his own resources, whatever that might involve. He was aware that his father had sold a farm inherited from Grandfather John Davis, saddler and sheriff, to keep him in college. He knew the family exchequer was empty. Times were exceedingly hard, and the panic of '93 was then in the making. Under the circumstances, and unwilling longer to be a burden, there was but one course open—to find a job. Having determined to teach, he looked about for an opening. At this juncture circumstance brought him an opportunity whose potential significance he could not then anticipate.

Major E. H. McDonald, a Kentucky soldier and lawyer, whose health had suffered from services rendered the South, had moved his family of nine children to a farm in the Valley of Virginia, several miles from Charles Town. Far removed from schools, he wrote to Washington and Lee soliciting assistance in obtaining a teacher. Young Davis was recommended, a proposal was made and accepted, and the close of the sum-

mer found him established in the major's household. His class consisted of twelve pupils. In addition to eight McDonald children ranging from kindergarten age to twenty, there were four cousins from an adjoining farm. The contract called for the instruction of the younger children in elementary subjects, the older ones in English and higher mathematics, and the two eldest daughters in French. For this service the 19-year-old instructor was to receive $25 a month and board. Such was the proposition he had accepted. As he saw it, the arrangement was not a bad one, for he had no expenses except for clothing, and thus was enabled to save almost his entire "salary."

There was one development he had not foreseen. Toward the close of the term it became apparent that his interest in Julia, the second daughter, an attractive girl of serious mind and strong character, was more than the impersonal interest of teacher for pupil. Propinquity encouraged their association, and finding much in common, they pledged their youthful troth. But both were young, the suitor was penniless and his education unfinished. Accordingly, at the end of the year, he returned to Clarksburg determined to try his talents in a larger field. By teaching another term, he figured, he would have enough money to carry him through law school.

Outlining this plan to his father, the latter suggested that he would gain more by studying law in his office for a year. To this the son agreed, and he became his father's clerk. His penmanship was neat and legible, and he devoted himself to the preparation of

legal documents, the taking of testimony and similar assignments, reading law and attending court as he found time to do so. This continued for a year. While debating his future plans, he was proffered, at 21, an appointment as assistant principal of the Clarksburg high school which he rejected. He had now determined if possible to enter law school immediately. With this in view, he went to his father with a new proposal.

"If you will go on my note for $300," he announced, "I will enter law school at once and graduate in a year."

John J. Davis agreed. The money was borrowed from E. A. Peck, a local capitalist, and added to what he had saved. Thus with high purpose and light heart, after two years' absence, he returned once more to Lexington.

A warm welcome awaited him. Some of his former classmates were taking their last year in law, the faculty showed its pleasure, and he settled down to the grind. Of that year the record is meager, though before it was up he was characterized by his professors as a "born lawyer." He also made good his promise to graduate in a year.

But before he reached that goal, tragedy descended. As spring approached, he took inventory of his capital. Approximately $150 remained—enough to see him through. It had been deposited in the Bank of Lexington, reputed the soundest and most conservative in the community. The institution had survived the Virginia land boom, and was above suspicion both as to resources and management. Then one day its doors

were closed, and residents of the town awoke to learn that capital and surplus were gone, and their deposits likewise. The cashier had jumped to South America. Only their bank books were left as souvenirs.

"Bones" Davis was stranded, with not enough cash on hand to pay his board bill, and graduation ahead! His father came to the rescue, and he finished on schedule time, but owing $450 instead of $300.

Again he returned to Clarksburg. College days over at last, life stretched out before him. He was admitted to the bar in 1895, at twenty-two, and entered his father's office. They were talking over his future one day when the son said, picking up pencil and pad:

"I had better put a card in the paper."

"Let me do it," the elder Davis suggested.

He wrote on a slip of paper and pushed it across the desk. On it was inscribed:

DAVIS AND DAVIS
Attorneys-at-Law

Thus was a partnership formed! In all the years that followed there was never a formal agreement between father and son. But practice came slowly, and the young lawyer's fees for the first year were disappointing, amounting to only $490. His debt still hung over him. When at this juncture a letter came from Lexington offering him an assistant professorship in the university law school, the proposal proved

irresistible. The lawyer was still half pedagogue. He realized, too, that at Lexington he would be able to continue his own studies and prepare himself more thoroughly in law. An acceptance followed, the partnership was suspended, and he returned to the university in a new role.

Some of the older law students questioned the action of the trustees in chosing so young an instructor, but soon discovered their error. His ability to express himself tersely and clearly, in language anyone could absorb, made him popular with his classes. It was with difficulty that many of the students refrained from calling him "Bones" or John. Tall, spare and straight, he looked the youth he was. Outside of the classroom he shared in the social life of the students and became a general favorite. His seniors on the faculty were the brilliant John Randolph Tucker, then dean of the law school, and Professor Charles A. Graves. Dean Tucker, who formed a strong attachment for his youthful assistant, died February 13, 1897, and was succeeded by Professor Graves.

Illustrating Dean Tucker's reputation at the bar, as well as his charm of manner and sharpness of wit, the story is told that when President Cleveland upon one occasion was considering his appointment as Chief Justice of the United States Supreme Court, a number of Tucker's friends arranged a dinner to enable them to meet and become acquainted. Dean Tucker was a rare raconteur. In the course of the evening he got to telling humorous stories. President Cleveland laughed so heartily at one of them that his chair tipped back-

At Pantops Academy. Organizers of S. U. V. (Semper Unis Videmer). Standing, left to right: Paul Pratt, John W. Davis, F. M. Magruder, John Klath. Seated, left to right: P. H. Bridges, Noyes, J. M. Gray, Andy Woods, Jim Rotan

ward and he struck the floor. The incident so humiliated him that he would never thereafter consider Tucker in connection with the appointment, holding that a spirit of levity did not comport with the dignity of the office. Melville W. Fuller of Chicago was subsequently named to fill the vacancy then existing.

Professor Graves, who later transferred his affections to the University of Virginia, becoming dean of the law school of that institution, succeeded Dean Tucker at Washington and Lee upon the latter's death. At the end of the school term he sought to induce his youthful assistant to return the following year, holding out a promise of a full professorship a little later. But the call of the law was stronger than the call to an academic life, and he returned to Clarksburg finally in 1897. His father was 62, and needed him in his office. He was 24, and ready to settle down.

Repeatedly thereafter his alma mater called. When Henry St. George Tucker became dean of the law school, succeeding Dean Graves, John W. Davis was the first man to be offered a professorship on the law faculty. Later still, when Dean Tucker left Washington and Lee to become dean of the law school of George Washington University, his place was tentatively offered to the Clarksburg lawyer. When President Denny died, he was spoken of for the presidency of the University, although this position was never tendered. But the offers came too late. By that time the fledgling pedagogue had become a full fledged lawyer. The call of the law had won.

CHAPTER VII

THE PLUNGE INTO POLITICS

If it were foreordained that John W. Davis should enter law, it was quite as inevitable that he should enter politics. His father's abiding interest in public affairs, his mother's coordinate interest, and the character of the community in which he lived all conspired to cast the mold for his own participation. Although without ambition to hold office, politics possessed for him the same fascination it had for his father. Moreover, their intimate association had given him an invaluable insight into political processes. This had been an important though perhaps unconscious part of his education, and coupled with an aptitude for law and logic, equipped him beyond the average for political activities. Thus his first test found him prepared.

A county convention was in session. Young John Davis, although but 21, had been made chairman. "Old John" Davis, almost three times his son's age, was a delegate. They were on opposite sides of the factional fence, the younger man training with the Hornor faction and the elder with the Jarvis-Monroe faction. Trouble threatened from the start, and came promptly

over a question of organization. John J. Davis obtained the floor, but had hardly begun to speak when the gavel banged belligerently.

"The delegate is out of order," the chairman announced. "He is not speaking to the question."

Blazing defiance, John J. Davis kept on.

Rap! Rap! Rap! Rap!

"The delegate is out of order and will take his seat!" John W. insisted.

"I'm not—I won't!" the elder man flared.

Bang! Bang! Bang! Bang! Above the turmoil the younger Davis shouted:

"The speaker has the same right as any delegate to appeal from the ruling of the chair. In the meantime he is clearly out of order."

"I do appeal from the chair's decision," roared John J.

The appeal was promptly submitted. With a shout he was voted down. Again he essayed to speak and again was ruled out of order. Once more he appealed, and once more the chair was sustained. After this had occurred three times, the elder Davis, perceiving the cause hopeless, stamped out of the convention. Thereupon the majority faction proceeded to organize and transact the business for which the convention had been called.

Following adjournment several delegates, among them Thomas G. Brady, who served as secretary of the convention, walked over to John J's. office to talk things over. To their surprise they found him in excellent spirits.

"Gentlemen," he observed, "I have no hard feelings about this matter. I just wanted to see whether John would do it!"

"He did!" a caller remarked.

"He certainly did," John J. agreed.

And there the matter ended. It was young John's first appearance on any political stage. His debut was a smashing success!

Four years later, when 25, he was sent to the West Virginia legislature under circumstances no less dramatic. In the meantime he had graduated in law, taught at Washington and Lee for a year, and returned to Clarksburg to practice.

Harrison county had not elected a Democrat to the legislature since the early 'eighties. In 1898, with the Republican organization split into two hostile factions, each striving for control, Democratic leaders concluded to make a fight in the hope of redeeming the district. They settled upon two men to make the race, one of them Colonel John C. Johnson, a shrewd and widely known political veteran, and the other the younger Davis. When the elder Davis learned of the program he sent for his son.

"John, don't let them do it," he said. "They are putting you up to be slaughtered. Besides, I want you to stick to the law and stay out of politics."

In deference to his parent's wishes, the son announced that he would not become a candidate. The organization leaders, knowing they could control the convention, nevertheless proceeded with their plans, regarding the slate as the strongest that could be

framed. In his brief period of practice John W. had made many friends, while managing to avoid the antagonisms of John J. Accordingly it was agreed to rush the nominations through the convention without allowing opportunity for objection.

The session was short and spectacular. Colonel James F. Allen, one of the authors of the scheme, was on his feet when the nominations were reached. Recognized by the chair, he moved that the candidates be nominated by acclamation. With a yell the deed was done. The younger Davis meanwhile was wildly waving his arms and shouting for recognition. His voice was drowned in the clamor as the delegates adjourned.

There was an interesting sequel. The two nominees campaigned together. Johnson, who was more than twice the age of the younger man, sacrificed himself that his running mate might win. Figuring that Davis had the better chance, he would say to voters:

"If you want to vote for a Democrat, vote for John Davis instead of for me."

When the ballots were counted it was found that Davis had won by a margin of several hundred votes, while Johnson had lost by less than two hundred. The tragedy of it, from the Democratic viewpoint, was to appear later when the legislature met.

On January 11, 1899, the twenty-fourth session of the West Virginia legislature was convened in Charleston. Interest was intense throughout the state, as a United States senator was to be elected, and it was known that the vote would be close. On the face of the returns the Democrats had a bare majority in the

House of Delegates and the Republicans a majority of one or two in the Senate. On joint ballot of the members of the two Houses the computation gave the Democrats a majority of one. This, however, was not final, as election contests involving several seats were pending in both Houses. Committees were designated to hear the evidence in these disputes, and the usual political jockeying followed, with leaders of each party endeavoring to control the legislature. As the deadlock dragged on, with neither side willing to yield, partisan feeling ran higher and higher. Principles were lost sight of, and the contest degenerated into one of hatreds and personalities. A climax was reached when Edward Rucker, the Republican Attorney General, was quoted in the newspapers as declaring he would "ride through the streets of Charleston in blood to his bridle bits" before a Democrat should be sent to Washington as a United States senator.

In this crisis Davis showed his mettle. At the outset of the session Owen S. McKinney of Marion county, who had been chosen Speaker, had appointed him chairman of the Judiciary Committee of the House of Delegates. The position carried with it the Democratic floor leadership. In that capacity he, in common with some of the cooler heads of both House and Senate, representing Republican and Democratic parties alike, had been holding a series of conferences in an effort to reach an agreement. When Rucker hurled his bloody challenge, the Clarksburg member issued a statement of one sentence which attracted statewide attention.

"West Virginia," he said, "can survive the election of another Republican senator, but it cannot survive the destruction of orderly government which would attend a reign of riot and bloodshed."

Davis emerged from the session, which lasted only six weeks, until February 25, as one of its foremost figures. With this start, the young lawyer soon afterward stepped into political leadership in Harrison county as his father's successor. In 1900, when 27, he was made chairman of the Democratic County Committee, and in 1904 served for the first time as a delegate to the national convention. Two years later his prestige took another bound with his election as president of the West Virginia Bar Association. Repeated attempts were made thereafter to persuade him to accept public office or to become a candidate, but he steadfastly refused, even when the nominations for Congress and the governorship were offered virtually without opposition. Politics remained a diversion, and he regarded himself first and last as a lawyer. Moreover, his father was aging, and he had become the active head of the law firm of Davis and Davis. Except for regular attendance at county, state, and national conventions, he devoted himself to the law. It was not until 1910 that public service called with an insistance that could not be denied.

CHAPTER VIII

THE TURN OF THE ROAD

For many years, until 1910, West Virginia had regularly gone Republican. As the campaign of that year approached, Democratic leaders, regarding conditions as ripe for such a development, determined on a drive to carry the state. "Cannonism" had been overthrown in Washington. "Progressivism" was gaining ground. The political atmosphere was greatly disturbed. More than for a decade past, the auguries were favorable to Democratic success. Accordingly word went down the line:

"Name your strongest men. If necessary, draft them."

In the First Congressional District, comprising eight northern counties, sentiment settled by common consent on John W. Davis of Clarksburg to make the race for Congress. In Marion County Clem L. Shaver, the leader of the Northern wing of the Democratic party, had been watching Davis for years and encouraged the movement to name him. It was generally agreed that he was the strongest man in sight, and it was felt that the one avowed candidate then in the

field, Henry Zylikin of Brooke County, could be induced to withdraw if Davis would make the fight.

But there was a hitch in the project. In Harrison County John J. Davis was uncompromisingly opposed to his son's entry into politics as a candidate for office. John W. Davis, who was enjoying a lucrative practice, was equally emphatic in his refusal to run. The law firm of Davis and Davis was unanimously opposed to the disruption of its practice! One after another, the Harrison County delegates were called in and requested to abandon their activities and throw their support in the convention to some other candidate. A few of the more obdurate among them, undismayed by these instructions, doggedly went ahead with the plan to place the younger man in nomination.

One of the active sponsors of the movement was Dr. J. W. Johnston, the Davis family physician. On the eve of the departure of the Harrison county delegates for the convention, to be held in Wheeling, he was sent for by John J. Davis. Familiar with the tempestuous nature of the elder man and anticipating a scene, he went in fear and trembling to the Davis law office on Main Street. There he found the two partners. The session was all he had expected. John J. was furious, the younger man quietly determined.

"You know I don't want John to enter politics," the elder Davis exploded. "Knowing how I feel, why do you persist in this plan to nominate him?"

"Because I think he's the best man we've got and the only one we can elect," Johnston retorted.

There were further words—many by John J., fewer by the physician. At last Johnston declared:

"If you feel that way about it, I'll quit. There's no sense in going ahead."

John W. Davis, who had been silently listening to the argument, interrupted at this juncture. He explained to the doctor that he couldn't afford to go to Congress, but the physician argued that the prestige of a term or two in Congress would more than compensate him for the loss of practice in this interval. As they left for the night, Johnston announced that in view of the attitude of father and son, he would remain in Clarksburg the following day instead of going to Wheeling with the other delegates, as he had planned.

Early next morning the physician was summoned by phone to the law office. John W. Davis met him.

"See here," said the lawyer, "if you don't go to Wheeling, I won't."

"Why should I go?" Johnston demanded. "You've got me tied up. I can't do anything."

"You've got to go anyway," John W. insisted.

When the westbound train left Clarksburg at noon the two were among the passengers, along with others of the Harrison county delegation.

At Wheeling the leaders from other counties awaited them, and the Windsor Hotel was blue with the smoke of many stogies. The talk was all of Davis. After dinner that night the Harrison county delegates gathered in the rooms shared by Davis and J. Carl Vance, his cousin and closest chum. There were James W.

Robinson, who was retiring as chairman of the congressional executive committee; Vance, who was succeeding him; Ernest D. Lewis, county chairman of Harrison county; Colonel James F. Allen, who had placed Davis in nomination when he ran for the Legislature in 1898; J. G. Shaw, editor of the Clarksburg News; Dr. Johnston, H. U. Crummit and several others from Clarksburg. Owen S. McKinney of Fairmont, ostensibly representing Zylikin's interest, who as Speaker of the House of Delegates had appointed Davis floor leader twelve years before, dropped in during the evening, as did Tusca Morris of Marion county. About nine o'clock Shaver arrived and went up to the room. Nelson Hubbard of Ohio county joined them. While the leaders conferred, a delegation of Republicans from Ohio county sent a message to the conference saying that if Davis were nominated they would get out and fight for him and guarantee a majority in that county. A little later a similar message came from a committee of Republicans from Marshall county.

From eight o'clock until four the next morning, the conferees debated behind locked doors the course to be pursued when the convention met. Davis was turned out into the hall while they argued. At intervals, Johnston would go to him with a message or a question, or attempt to persuade him to acquiesce in the plan to nominate him. At four A. M. Davis, pacing the hall outside, said to the physician:

"Doc, if it weren't for one thing, I wouldn't consider it for a moment. I'm afraid that if I don't take it

they'll say I 'laid down' on my friends. I don't want any man to ever say that of me."

Johnston returned to the room where the delegates were conferring and reported the remark. Some of those present construed it to mean that by nominating him he could be forced to run. Finally John J. Nolan, one of the participants, proposed that Davis' name be placed before the convention. It was so agreed all around. As the haggard leaders left, they encountered Davis and informed him of the decision.

"I won't run," he protested. "I'll decline the nomination."

"You can do as you please," he was told. "That's what's going to happen."

Zylikin had gone to bed. 'Nels' Hubbard volunteered to waken him and tell him he had to withdraw.

"Not only that," said Hubbard, "I'll tell him he's got to place John W. in nomination!"

The cold-blooded errand was well performed. Zylikin bowed to the will of the organization. When the convention met at 11 o'clock that morning he launched into a lengthy nomination speech. Davis, sitting among the delegates, was observed to grow increasing restless, and appeared to be on the point of interrupting. Anticipating his purpose, the leaders shifted their plans. Zylikin never finished. A voice yelled from the floor:

"I move that John W. Davis be nominated by acclamation!"

History repeating itself, after a twelve-year interval! The delegates howled their approval. Davis

jumped to his feet, but before he could speak had been nominated. Shaver supplied the push that put him over.

A committee was named to escort him to the platform. Zylikin, Hubbard and Robinson, with one or two others, became the escort. It was a curious procession. With two men pushing and two others holding his arms, he was shoved and dragged to the stage.

"Now, damn you," one of them muttered, "accept this nomination."

Reluctantly he did so. Weeks later two telegrams signed by John J. Davis were placed in his hands. One was a reply to a message he had sent his father the night before the nomination asking his advice. It read as follows:

"Do not yield to solicitations. Stand firm on declination."

A second message, filed at Clarksburg at 11:48 A. M. on the day of the convention, read:

"Say no and be firm."

Both telegrams had been delivered to the convention hall. Ignatius Brennen, a loyal friend and admirer, receipted for them and—stuck them in his pocket! The originals hang in the Lee Street house in Clarksburg. Their author lived to applaud that day's events.

A crowd of thousands awaited the nominee when he returned that night from Wheeling. Escorted to the Court House, he delivered a short speech from its spacious steps. As he finished, he observed Dr. Johnston on the sidewalk below. Across the street, unobserved by the physician, stood the elder Davis. De-

scending the steps and seizing Johnston by the arm, the younger man said:

"You got me into this. Now you've got to face the music."

Johnston balked, but it was too late. They confronted John J. together. The old man's eyes flamed and his whole figure seemed to lengthen. The white beard trembled; the long forefinger shook threateningly beneath the physician's nose.

"You're a katydid!" he blazed.

Next morning Dr. Johnston was surprised to see the elder Davis walking over from the postoffice an hour earlier than usual. As they met, the lawyer requested the physician to come to his office.

With laggard steps, uncertain of what was coming, Johnston climbed the stairs and faced his patient.

"Doctor," the old man said, "I couldn't sleep last night. What I said to you sat on my conscience. It worried me all night long. I offer you my apology. I hope you will accept it."

Johnston could not reply.

In the following November John W. Davis was elected to Congress by a plurality which reversed the normal result in the First Congressional District, receiving 20,370 votes to 16,962 for Charles E. Carrigan, the Republican incumbant, a candidate for reelection.

It was the turn of the road. The outcome altered the entire course of his life.

CHAPTER IX

TURKEYS AND TORTS — THE "DEBS INCIDENT"

One summer day in 1895 John W. Davis, junior member of the newly-formed law firm of Davis and Davis, was sitting alone in his office when heavy footsteps sounded at the door and in walked John Patten, a farmer client and friend of his father's.

"John, have you ever had a case?" Patten inquired.

"Not yet," was the candid reply.

"Want one?"

There was an emphatic affirmative.

So it was that a future leader of the American bar went into court to contest the ownership of a turkey gobbler and eighteen turkey hens, which, wandering through the fence from Will Smith's farm on Elk Creek to Jim Copeland's place, adjoining, supplied the ingredients for his first retainer. Incidentally, he lost the case, though his client got the turkeys.

Business did not overwhelm the junior lawyer that first year. His first cases in the police and Circuit courts did not differ from those of his contemporaries. In one he appears for a colored woman whose husband

has mistreated her. In another he represents a farmer in an action to recover possession of a pig. Clients were taken as they came, and he worked his way gradually into the higher courts. On June 19, 1895, he was admitted to practice before the West Virginia Supreme Court of Appeals on motion of Melville Post. In the same year he was admitted to the Federal courts. It was not until 1897, however, after quitting the faculty of Washington and Lee to return once more to Clarksburg, that his fees assumed substantial proportions. From then until 1910, his career at the bar was that of an increasingly successful and, in later years, a prosperous lawyer in his native city.

The growth of Clarksburg and the rapid industrial development of the region of which it was the center, ushered in with the present century, enlarged the variety and volume of the firm's practice. New corporations were constantly being formed, others required local representation; business expanded, new population came, and prosperity followed, brought chiefly by the discovery and production of coal, oil, and gas.

There was one cardinal rule in the office of Davis and Davis. This was that the door should be open to all alike, and that each client should receive the same consideration as every other. Father and son preferred a general practice to exclusive retainers which would monopolize their time and attention. The one exception to the general rule gave preference to civil over criminal cases. The annual retainers of the firm during the period of the partnership were nominal in size and few in number. Neither father nor son was ev-

er seen at Charleston during sessions of the legislature lobbying for or against legislation in which clients were interested. They represented railroad, coal and gas corporations on the one hand, and labor unions on the other. The Baltimore and Ohio Railroad was a client. The miner's union was another. The window glass workers and the window glass industry alike retained their services. The ethical standards of father and son were identical.

It is said by those in position to know that during the interval of the younger man's active practice in Clarksburg he would never accept a case unless first convinced it was legitimate and that there was a chance to win it. John W. Davis is quoted as saying to one man who brought his troubles to the office:

"Let it alone. You haven't a case."

David C. Reay, a lawyer of Morgantown, West Virginia, who knew him intimately, says in this connection:

"It was a cardinal principle with him never to take a case for a client without first becoming convinced that the client was in the right. I know of one instance in which, after consultation until a late hour at night over the merits of a case in which he had been asked to engage, he requested permission to sleep over it before giving his answer. After he had retired there was taken to his room by one of the parties to the conference a report containing the only decided case touching on the point involved. Notwithstanding the lateness of the hour he read it through. The next morning he reported that his consideration had convinced him of the justness of the contention, and that he was ready to participate. The case was tried and went to the highest court, which sustained him. It would be a great thing for the country if all members of the bar could have this viewpoint."

E. Bryan Templeman, who was associated with the law firm of Davis and Davis for several years, and subsequently formed a partnership with the elder Davis,

says of John W. Davis, based on intimate observation during the period of his practice in Clarksburg:

"He possessed a remarkable mind and a wonderful gift of analysis. He could grasp a case and put it in logical sequence better than any man I have ever known. In his arguments he was concise and convincing, and being reflective, he could see both sides of a case. To my mind he answers his own description of a natural lawyer: 'One who knows the law and can get up and tell it.' "

A judge before whom the two Davises, father and son, tried many cases, contrasted their methods thus:

"If John J. Davis thought a witness were lying it would arouse all of the innate hostility and belligerence in his nature, and on cross-examination he would tear into him. Usually he would get the truth, but would anger the witness. John W. Davis, on the other hand, would set his trap, lead the witness into it, and get the truth in half the time and with half the effort; and without arousing any antagonism. He would also sit down and figure out the case in advance, so that when he came into court he would know about what the other lawyer had up his sleeve. I seldom knew him to be caught unawares. John J. Davis was so partisan in his mental processes he could only see one side of the case, and would frequently be embarrassed by some development he had not anticipated."

These estimates emphasize the marked difference in temperament of the two partners.

It is recalled by a distinguished jurist before whom John W. Davis often appeared that he was ever ready to acknowledge error, and that he impressed his colleagues at the bar as possessing a fair mind. Upon one occasion the court announced a ruling with which he disagreed and to which he took indignant exception. The court, however, was firm. The next morning the younger Davis approached the bench, and addressing the judge said:

"I was mad last night."

"Yes," said the court, "I know it."

"I went back to the office," Davis continued, "to look up cases to prove you were wrong. I found you were right. I wanted to tell you so."

Altogether father and son were actively associated as partners for sixteen consecutive years, from 1897 until 1913, when the firm of Davis and Davis was dissolved upon the appointment of John W. Davis as Solicitor General of the United States. Sometimes they disagreed concerning cases that came to them. The elder Davis cherished strong prejudices. The younger man, who gradually assumed the burden of the practice, was disposed to be more dispassionate in his viewpoint. When their minds clashed they would "argue it out," according to former associates, until they reached a point of agreement. The younger lawyer had the highest respect for the elder man's opinions. In the latter years of their association, when John W. Davis became the dominant factor in the firm's affairs, his consideration for his father was, on the word of a Clarksburg authority, a "wonderful thing to see."

From the first the firm was active in court work. Both were fond of the arena, and enjoyed nothing more than to try a difficult case. They aided in the organization of several glass companies, some of which were cooperatively owned, and subsequently represented them as counsel. John W. Davis made an exhaustive study of the industry, learning it from top to bottom. Many years later the knowledge acquired at that time proved an important factor in winning a case for the American Window Glass Workers in the United States Supreme Court. Former associates recall that a dele-

gation of French glass blowers dropped in the office one day with a series of resolutions written in their own language. By translating the documents and conversing with his callers in French, John W. Davis made staunch friends of the entire group.

In Clarksburg he is remembered as an indefatigable worker who was nightly at his office—reading, studying, preparing cases or conferring with friends and associates. After all others had left he would often remain alone, and the lights would burn far into the night. Aside from natural tendencies there appears to have been a tragic reason for this singleness of interest. On June 20, 1899, at Charles Town, in the Valley of Virginia, the romance of the former country tutor and his pupil, begun six years before, culminated in his marriage to Miss Julia McDonald. She was welcomed in Clarksburg and made happy. A little more than a year later, after the birth of a daughter, she died a lingering death. The young father plunged into law and politics, giving them his whole thought and energies in the years that followed. His growing daughter remained at the Lee Street home in special care of a sister. She is now Mrs. William McMillin Adams, the wife of an American business man stationed abroad. When news of her father's nomination reached her at Copenhagen, she cabled: "Fine! Now go to it!" They have always been deeply devoted.

It was not until 1912, while serving in Congress, that a second romance matured in his marriage to Ellen Graham Bassel of Clarksburg, a charming companion of college days who likewise had married earlier. She

had been widowed by death several years before. This ceremony was performed in Clarksburg by the Rev. Charles Baird Mitchell, and the union proved a happy one. Her father was the late John Bassel, for many years one of the leaders of the West Virginia Bar. Older residents of Clarksburg recall that he and the elder Davis were professional rivals and antagonists for almost a generation. It was a common saying in the old days that when two disputants would decide to go into court, and wanted the best lawyer obtainable, "one would get John Bassel and the other would get John Davis." They were on opposite sides of innumerable cases. It remained for their children to unite the two families through marriage.

Throughout his life in Clarksburg, John W. Davis lived at the Lee Street house. It was only two blocks from the office, and he was always at home for meals. As his law practice grew, he kept a saddle horse with which he roamed the countryside. A blooded animal was sent him from Kentucky by Sam Holley, his former roommate at college, some years after their graduation. In riding he found his recreation.

Active as he was in politics, his office became an unofficial headquarters for political conferences, and the door was always open to acquaintances or friends. Those who knew him then say that his earlier speeches were "hopelessly serious," and that it was not until later years that he learned to lighten them with occasional shafts of humor. His speeches were also short, whether in court or on the political stump. Reflecting the training of youth, they were scholarly, clear and

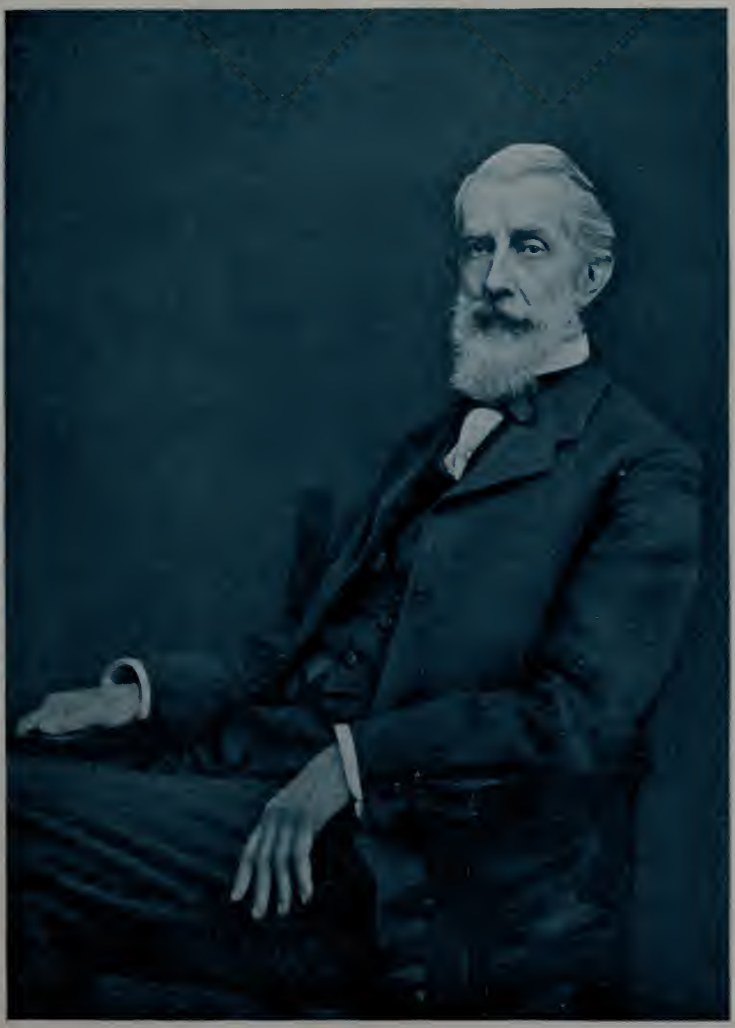
concise. Another point that comes to mind among old friends is that "John Davis was never much for small talk." When he spoke he had something to say. While extraneous activities were few, there was a notable exception. As a young man he followed his father into the Masonic order, and while neither seeking nor holding Masonic office, was always an interested member.

Down to 1910, however, the practice of law dominated his thought and monopolized most of his time. Even politics was a diversion. When he did become a candidate for political office he was "kicked in" by his friends. But that is another story.

II

What may be called the "Debs incident" has frequently figured in print since John W. Davis first stepped into the presidential picture. Various published accounts have purported to tell how the young Clarksburg lawyer, fresh from college and fired with idealism, once intervened in behalf of Eugene Debs and "Mother Jones" when these celebrated agitators were jailed during a West Virginia coal war; and how, volunteering his legal services, he procured their release from prison. Unfortunately for the record there have been numerous versions, all deficient in detail and most of them based on hearsay or the imperfect recollections of persons presumably familiar with the facts.

Impartial investigation confirms the story in part. The Debs connection is definite insofar as the court records show him to have been one of the defendants



The late John J. Davis, of Clarksburg, West Virginia, father of John W. Davis, and his law partner for many years. Note the extraordinary length of the fingers

in an action in which Davis was associated as counsel. On the other hand, although it is clear that "Mother Jones" was on the ground at the time, making the inflammatory speeches for which she was famous, *there is no evidence that she was one of his clients.* In this connection there is a curious intermingling of legend and fact, giving the appearance of truth to that which is probably fiction.

The scene was Clarksburg in the early days of West Virginia's industrial development, when unionism was more of an issue than at present, and when miners and operators fought with every weapon at their command. Injunctions were freely employed to crush strikes and suppress labor outbreaks. Labor leaders, charging that the companies controlled the courts, retaliated with threats of violence. Pitched battles often ensued, and the industrial region around Clarksburg at times became a battleground for the contending forces. The Clarksburg Exponent, which caused an exhaustive search of all available records to be made in an effort to run down the Debs story, describes in the following language the situation then existing:

"Northern West Virginia was almost seething with a mine strike at this time. At Fairmont, Monongah and Clarksburg columns of bituminous coal miners marched behind their leaders and made their camps at night together by the fireside, eating together of their bread of unionism. On the street corners the leaders argued the crowds, declaring that they were proud that they were called agitators and demagogues. "Mother" Jones, sharp-tongued and lashing the federal courts with crude epithets, was here, and in an application for an injunction made in the circuit court of the United States for the District of West Virginia, owners of mines at Monongah and Fairmont asked that the leaders from other states and men from West Virginia be enjoined from marching, from speaking, and from alleged harassing of the men who wished to work."

Then it was—repeating the folklore—that the youthful idealist, recently returned from Washington and Lee University, took up the cause of the miners and liberated, among others, both Debs and "Mother Jones." First he is pictured as mounting the rear end of a wagon on "P. K." hill, at the edge of town, and saving them from a lynching, then, when they were arrested, as going into court and getting them out of jail.

The foregoing is presumably pure legend. It was no doubt promulgated because, like most legends, its root was based on a nearby truth, viz.:—there are court records to show that the young lawyer actually took the side of the strikers *at that particular time.* This circumstance did not, at a later time, debar him from representing coal companies and other corporate interests as well as labor unions.

The researchers of "The Exponent," which sent investigators to Parkersburg, disclosed the following sequence of events relating to the episode:

1. On August 16, 1897, James Sloane and Charles Mackall, coal operators, applied separately to the United States circuit court for the District of West Virginia for an injunction restraining Eugene V. Debs and others from interfering with the property of the complainants or their employees. On the same day, Judge J. J. Jackson granted a temporary injunction in conformity with their applications.

2. On August 17, 1897, Judge Jackson issued an order requiring the miners to cease marching over the roads of Harrison County.

3. On August 21, 1897, Judge Nathan Goff, who later became United States Senator for West Virginia, issued an order for the arrest of twenty-seven men for contempt of court, and sentenced them to serve three days in the Harrison County jail at Clarksburg and to pay the costs in addition.

4. On the same day, a demurrer to the injunction order of Judge Jackson was filed in behalf of twelve of the men so arrested. *Winfield Scott and the firm of Davis and Davis appear as counsel for the men.* Interlineations in the handwriting of John W. Davis prove that he took an active part in the preparation of the case and indicate that he personally wrote the demurrer. Debs' name does not appear in the demurrer, making it appear doubtful that he had been arrested at that time, at least by Federal authorities.

5. Three months later, on November 23, 1897, the cases having meanwhile been joined, all were dismissed and the injunctions made permanent.

More important historically is the argument made in the demurrer. As copied from the court records and reprinted in The Exponent, the Davis firm contended:

> "THAT THE COURT CANNOT AT THE SUIT OF THIS PLAINTIFF ENJOIN AND RESTRAIN THE DEFENDANTS FROM MARCHING TO AND FRO THROUGH OR OVER COUNTY ROADS UNLESS IN SO DOING THEY COMMIT A BREACH OF THE PEACE."

Thus the youthful lawyer, in what is said—legend once more—to have been his first case in the Federal Courts defended the principle of free speech and free assembly guaranteed by the Constitution. It does not appear that service was obtained upon Debs, nor that

"Mother Jones" was a defendant in the cases in question.

In later years, the firm of Davis and Davis appeared as counsel for various labor groups, but this is the only instance discovered in which the socialist leader was a defendant in cases with which they were associated.

CHAPTER X

ACCEPTING OPPORTUNITY

Congressional reputations of the more favorable sort rest upon two essentials; one of them individual ability, the other the opportunity to display it. There is a school of thought which exclaims with Napoleon: "Opportunity? I make opportunity!" Adherents of this particular philosophy sometimes come to Congress. If they remain, their viewpoint gradually undergoes a change. For in Congress perhaps more than in other fields of political action it is frequently true that circumstance shapes careers.

From the day the Sixty-second Congress convened, on April 4, 1911, circumstance favored the new member from the First District of West Virginia. With his own party in control, the friendly hand of fate was first to place him in position to apply his abilities, and then to present two favorable opportunities for their display. The manner in which he met them brought him national prominence and carried him further along the road marked out for him to follow.

It was a perfect setting. The progressive movement ushered in with the Roosevelt era had reached the

point of eruption. The Ballinger scandal had broken. The public conscience had been aroused and political passions inflamed by cumulative evidences that the processes of government were being manipulated for private and selfish ends. As a phase of the effort to break the grip of so-called "privileged interests," these real or fancied abuses were beginning to result in reprisals. Here and there the political upthrust persisted, as the popular will found expression. The election of a Democratic Congress in 1910 was a part of this general movement. For the first time since 1895, the Democrats controlled a majority in the House, enabling them to direct its procedure and dictate its programs.

Such was the situation when John W. Davis came to Washington. At the outset of the session he became the beneficiary of a fortuitous committee assignment which contained in it the germs of the larger opportunities which were to follow. A short time before he had formed the acquaintance, in Clarksburg, of Charles C. Carlin, a member of Congress from Virginia and one of the higher Democrats on the House Judiciary committee. Through Henry D. Clayton, its Chairman, Carlin brought influence to bear on Oscar W. Underwood, then party floor leader, to have Davis put on the Judiciary Committee. This was the entering wedge to Davis' congressional career.

While his first term found him active in the preparation and passage of numerous legislative measures, his major energies were concentrated on legislation which came before the Judiciary Committee. Several anti-

trust bills were pending, and extended hearings were held in 1912-13 which laid the foundation for the subsequent enactment of the Clayton Act. Former colleagues credit him with preparation of the final draft of the anti-injunction and anti-conspiracy clauses of the Clayton bill for presentation to the committee, and with additional activity in connection with the clause providing for a jury trial in contempt cases. On May 14, 1912, he made an extended speech dealing exclusively with the anti-injunction features of the proposed legislation, discussing abuses and remedies and defending its constitutionality. On July 9, 1912, he addressed the House on the contempt feature, again defending the constitutionality of the proposal and presenting an argument for jury trials in all cases where the alleged contempt did not occur in the presence of the court.

As chairman of a sub-committee of the Judiciary Committee he reported a compulsory workmen's compensation act which passed both houses of the Sixty-second Congress, but too late to be considered in conference. Reintroducing the measure with amendments in the Sixty-third Congress, he again fathered its passage through the House. The bill was finally killed in the Senate.

His speeches of that period include an attack on Schedule K of the Payne-Aldrich tariff act, which President Taft declared indefensible; and a summary of the achievements of the Sixty-second Congress from a Democratic viewpoint. While questioning its constitutionality, he took a prominent part in the pas-

sage of the Webb-Kenyon act prohibiting the transportation of intoxicating liquors in interstate commerce. He appears also as the author of an amendment which failed to pass the House providing a penalty of fine and imprisonment for violation of the same act. Through the whole of his congressional activity there runs the thread of an obvious interest in constitutional law. His penchant is discoverable in the debates of the Sixty-second Congress, in his formal speeches, and in the character of the legislation to which he chiefly devoted his attention.

But while active in the routine of the House—especially so for a new member—it was not in this field, but in two distinct and more or less extraneous developments during the relatively brief period of his legislative service that he won his chief distinction. One of these was the Archbald impeachment trial, in which Judge John W. Archbald of Pennsylvania was convicted of "high crimes and misdemeanors" and removed from office. The other was the Glover case, in which Charles C. Glover, a wealthy Washington banker and society leader, was arrested and brought before the bar of the House of Representatives for contempt, following a personal attack on Representative Thetus W. Sims of Tennessee. Both attracted national notice, figuring in the headlines day after day and being reported at great length in the press. As the prosecutor in each instance, Davis became known to the public almost overnight. Far more important in its bearing on his political future, however, his handling of the two cases brought to the attention of colleagues and the

country at large the character of his ability and legal learning. The reputation thus established led directly to his subsequent appointment as Solicitor General of the United States.

Judge Archbald, a member of the United States Circuit Court and United States Commerce Court, was impeached by the House July 11, 1912, on thirteen articles which, in effect, charged him with prostituting his office for personal gain. The Senate began the trial of the impeachment charges December 3, 1912, and concluded it January 13, 1913, returning a verdict of guilty. It was the first impeachment tried in a generation. In the entire history of the Republic only eight persons had been brought to trial on impeachment charges, and but three of these had been convicted. Archbald was the third.

When the House decided to bring the impeachment, Davis was chosen as one of the managers. When the case came to trial, the defense relied in part on the contention that while Judge Archbald admittedly had speculated in coal lands controlled by railroads which were litigants in his court, such conduct did not constitute "high crimes and misdemeanors" within the meaning of the Constitution and therefore was not proper ground for impeachment. Answering this argument, Davis took the position that a Federal judge holds office during life and "good behavior," and that an obvious departure from "good behavior" in office is in fact a "high crime and misdemeanor." Even if Archbald's conduct were not criminal in the accepted sense, it was highly improper

and calculated to destroy public confidence in the courts, he contended, in that no judge who speculated in the properties of persons or corporations which came before him for judgment could be considered an impartial judicial officer. Indeed, he added:

> "No man can justly be considered fit for public office of whatever rank or kind who does not realize the double duty resting upon him—first, to administer his trust with unflinching honesty, and, second, and hardly less important, to so conduct himself that public confidence in his honesty shall remain unshaken. This confidence of the people in the integrity of their officers is the foundation stone, the prop, the support of all free governments; without it constitutions and statutes are empty forms, executives, legislators and judges the creatures of an ephemeral day. In forms of government only that which is best administered, in fact and in appearance as well, is best."

He declared further that if conduct such as that described did not constitute a legal crime or misdemeanor, a statute so designating it should be immediately enacted.

Archbald was convicted on five of the thirteen charges.

The Glover assault, which occurred on April 18, 1913, contained all the elements of a newspaper sensation. Representative Sims, a veteran legislator, had seen fit in the preceding Congress to question the integrity of the banker in connection with certain real estate schemes in the national Capital, and had vigorously opposed a bill for the purchase by the Government of a large tract of real estate which Glover owned. While his remarks were deeply resented, it was not until many weeks after Sims had delivered them that the personal clash occurred. About nine o'clock on the morning in question the Tennesseean was walking through Farragut Square, in Washington, on the way

from his residence to the Postoffice Department to see Daniel E. Roper, then First Assistant Postmaster General, when Glover accosted him. Glover's own account of the encounter, as repeated by J. Fred Essary, Washington correspondent of The Baltimore Sun, during the House investigation of the incident, related that he had observed Sims "waddling" across the square, and after stopping him had said:

"I want to tell you to your face that you are a contemptible liar; yes, a miserable, contemptible liar. Furthermore, I mean to show you just what I think of you."

With that he struck the representative on the jaw with the palm of his hand, following this up with another blow in which the banker said he hit "as hard as I could."

Others intervened, Sims was led away, and Glover returned to his waiting car and drove off.

An investigation was promptly ordered under authority of a resolution presented by Representative Finis J. Garrett of Tennessee. The committee named to conduct the inquiry included Representatives John W. Davis (Chairman), J. Harry Covington, Charles R. Crisp, S. F. Prouty, and John M. Nelson. Its members were also directed to determine and recommend the course of procedure to be followed in dealing with Glover, to the end that the privileges and immunities of members of the House might be maintained and protected.

After examining Sims and several other witnesses, Davis as chairman of the committee prepared a report

which once more revealed a grasp of constitutional principles, but above all was characterized by clarity and conciseness.

It set forth the following four conclusions:

"First. That for the purpose of this inquiry it is not necessary to consider what privileges, if any, the House of Representatives or its Members may possess other than those expressly stated in the Constitution.

"Second. An assault upon a Member of the House of Representatives for words spoken in debate is a breach of its privileges and a contempt of the House.

"Third. Such an assault, when committed on the person of a Member for words spoken in debate, constitutes a contempt of the House in which he is then sitting, although the words may have been spoken in a prior House.

"Fourth. The House of Representatives has power under the authority of the Constitution to punish as a contempt against it such a breach of its privileges as is involved in the assault upon Representative Sims by the said C. C. Glover."

Under these headings, the chairman went into an analysis and exposition of the constitutional powers of the House to punish for contempt, citing precedents and authorities, and submitted a resolution directing that Glover be brought before the House "on the charge of being in contempt for having violated its privileges." Then ensued a spectacular contest over the report. The debate lasted for five hours, and ended in its adoption by a large majority. In the opinion of many members of the House, as expressed at the time, Davis' speech in support of the resolution was one of the greatest addresses involving an interpretation of the Constitution ever delivered in that body.

First citing the Sixth clause of Article I of the Constitution which, as the palladium of the liberties and immunities of both Houses of Congress, provides that Senators and Representatives shall be privileged from

arrest and that for any speech or debate in either House they shall not be questioned in any other place, he said:

"These two great immunities are the defense and support of every legislative body. They are indispensable to the proper exercise of its functions and, even if not provided by the express language of the Constitution, the very necessity of the case and the whole history of parliamentary government would have justified the conclusion that they had been conferred by implication. How vital the makers of the Constitution deemed this freedom of speech becomes at once apparent when we consider the sweeping language in which it is conferred.

"In the first place, the express language of the Constitution is that Senators and Representatives shall not be questioned in any other place, thus making the immunity absolutely unrestricted in point of space, whether it be a court, a similar assembly, a popular gathering, a public highway, or a private chamber.

"In the second place, this immunity is left absolutely unrestricted in point of time. No attempt is made to set a period beyond which a member shall be no longer protected; but from the moment when words are spoken on this floor to the very day of his death, there is extended over him at all times the shield of the Constitution."

Coming down to American precedents, case after case was citied, beginning with the Colonial assemblies and running through the acts of state legislatures and other assemblies and the decisions of the Supreme Courts of the United States and the individual states, —literally scores—all upholding the principle that a legislative body possesses an inherent right and power to punish for contempt or for the invasion of its immunities. Couched in moderate terms and delivered with dignity, the argument brought its author fresh fame.

Glover was arrested, brought into the House chamber, and in the presence of its membership rebuked by the late Champ Clark, then Speaker.

When President Wilson in the summer of 1913 announced Davis' appointment as Solicitor General, Re-

publicans and Democrats alike joined in personal tributes. The late Representative James R. Mann, of Illinois, who became the Republican leader of the House, said at that time:

"I want now to congratulate the President of the United States and his Attorney General on an act which has recently been performed by the President, undoubtedly with the approval and possibly on the advice of the Attorney General, and also to congratulate this House on the nomination and confirmation of one of its ablest and truest members as Solicitor General. John William Davis, we all take our hat off to you."

An echo of the esteem in which he was held by colleagues while a member of the House was heard five years later at the time of his appointment as ambassador to Great Britain. Representative Gillett of Massachusetts, then the Republican floor leader, stating that he had just read in the newspapers of Mr. Davis' nomination, said:

"He was formerly a member of this House, and those of us who had the pleasure of serving with him will recall him as a most capable, courteous and popular member.

"We all admire him and trust him as a man of sound judgment, of broad culture and learning, of high character and of most charming personality, and I am sure that while he is at the Court of St. James that very lofty standard which has been fixed there by a long line of great Americans will not be lowered and that the exacting demands of this momentous crisis will be adequately met."

CHAPTER XI

DESTINY TAKES A HAND

Woodrow Wilson and John W. Davis first met in the summer of 1912, shortly after Mr. Wilson's nomination for President of the United States by the Baltimore convention. The occasion was a pilgrimage of Democratic members of Congress to Seagirt, New Jersey, to meet the nominee. In the succeeding elections Wilson won and Davis was returned to Congress for a second term. Each entered upon his new service in the Spring of 1913. Within sixty days thereafter the legislator was doomed to encounter his first sharp disappointment in public life—but one dictated by destiny. Had he achieved the ambition of that hour, his life voyage would have moved in quieter waters.

Through the resignation of Judge Nathan Goff to become a member of the United States Senate, a vacancy had occurred on the United States Circuit bench for the Fourth judicial circuit, comprising the states of North and South Carolina, Maryland, Virginia and West Virginia. The eyes of the lawyer-legislator turned toward it longingly. It was not an appointment to be obtained by scrambling. Within the gift

of the Executive, it would come only as a personal selection or in response to satisfactory endorsements. Members of the House Judiciary Committee, learning of the desire of their colleague to transfer his activities to the judicial branch, joined unanimously—Democrats and Republicans—in urging his appointment upon Attorney General James Clark McReynolds. This tribute was supplemented by scores of personal endorsements by members on both sides of the chamber. Many of them called at the Department of Justice to recommend his selection. McReynolds listened courteously to these appeals, and—the place went to another! President Wilson, wishing to recognize a friend for whose character and ability he had a high regard, appointed Charles A. Woods of South Carolina to the vacancy. Davis, while disappointed, settled down to his legislative duties.

This was in May, 1913. About the same time Attorney General McReynolds began casting about for a new Solicitor General. Numerous congressional delegations were calling on him in the interest of Federal judges, district attorneys, marshals and other appointments which they desired for constituents. As they would finish their appeals and turn to go, he would frequently say:

"Wait a minute. Before you go I've something to ask of you. I need a Solicitor General. I want the biggest lawyer in the country for the job. It doesn't pay much—$10,000 a year. That is very little for the kind of a man I want. But you find him and I'll get him. I'll make him serve!"

There would come a prompt reply:

"What's the matter with John Davis? Get him."

McReynolds would make inquiries. His callers would assure him:

"He is the ablest lawyer in the House."

They recalled the Archbald case—the Glover case—the endorsements for the Circuit Court. Time after time this occurred. McReynolds became impressed. One day he sent for Representative Charles C. Carlin of Virginia, a member of the Judiciary Committee, and asked about the West Virginian. He had been looking up his record and sought additional light on his legal ability and general fitness. Carlin confirmed the judgment of other colleagues as to Davis' capacity and character, and joined in urging favorable action.

Interviews were arranged, first with the Attorney General and later with President Wilson. The personal element determined the issue and the appointment followed, with Senator William E. Chilton of West Virginia acquiescing. Such were the circumstances of the selection of John W. Davis for the Solicitor Generalship of the United States, an office which above all else requires for its successful administration a lawyer of commanding ability. The Government's case is in his keeping. If he fails his failures cannot be overtaken and corrected, for his arguments are made to the court of last resort—the Supreme Court of the United States.

In the five ensuing years, beginning August 30, 1918, he established a record that had never been approached by any predecessor, personally arguing a total of sixty-

seven cases during the five full terms of the Supreme Court. One other lawyer, John G. Johnson of Philadelphia, had argued a total of seventy-one cases in the highest court in the course of a practice covering half a century. No member of the legal profession had ever remotely endangered the Davis record within a similar period. The percentage of decisions won for the United States out of the sixty-seven so argued likewise set a standard. Among those pitted against him in these contests were former Senator Joseph W. Bailey of Texas; John G. Johnson of Philadelphia, long a leader at the bar; former Solicitor General Frederick W. Lehmann of St. Louis; James M. Beck of Philadelphia, who subsequently became solicitor by appointment from President Harding; Richard Lindabury of New Jersey; former Secretary of War Dickinson; former Attorney General George W. Wickersham; another former solicitor general in William Marshall Bullitt; David A. Reed of Pittsburgh, later United States senator from Pennsylvania; John G. Millburn, William D. Guthrie, Frederick P. Fish, John P. Wilson of Chicago and others equally prominent in the legal profession.

Mr. Davis' incisive, forceful and entertaining style of argument is remembered by many judges and lawyers who listened to him during his service as Solicitor General. The following excerpt is selected at random, in the case of Cox vs. Wood, (247 U. S. 3):

"The appellant, Cox, describes himself in his petition as a zealous patriot, not only ready but willing to serve his country for any purpose which does not carry him into the presence of the armies now arrayed against the United States. From his home in Missouri, or his camp

John W. Davis in 1901, at the age of twenty-eight, a rising young lawyer of Clarksburg

in Kansas, as the case may be, he bids defiance to the German Empire and all its allies, and challenges them to combat—but on American soil.

"His burning valor suffers, however, in comparison with that of learned counsel, who, in his behalf, undertake no less a task than to rewrite the Constitution of the United States, and invoke as a consequence a reversal of the judgment of this court lately rendered in the Selective Draft Law Cases, 245 U. S. 366."

He was noted for brevity, no less than for wit. His arguments were never long. That in the Harvester Trust case is said to have consumed only forty-five minutes, although based on many thousand pages of testimony.

As an incident of his duties as Solicitor General he was called upon to assist in drafting several important legislative measures the constitutionality of which he later successfully defended in the Supreme Court. The Clayton Act was one of these. In the summer of 1916, while absent from Washington on a vacation, he was recalled by President Wilson to participate in the preparation of the measure later submitted to Congress and passed as the Adamson Act, granting an eight-hour day to the crews of trains operated in interstate commerce. This measure, which aroused a storm of controversy, was credited at the time with having averted a nationwide railroad strike, although critics of the administration characterized it as legislative blackmail.

Upon returning to Washington in response to the Presidential summons Solicitor General Davis received the following note from the White House:

September 6, 1916.

My dear Mr. Davis:

I am afraid we inconvenienced you by asking for your return to Washington. We felt that we were in need of the very best guidance

and advice last week, and therefore took the liberty of sending for you. I would be very glad indeed to have any suggestions that you may be prepared to give as to the best form in which to carry out the recommendations I made to the Congress in my Message of last week concerning the railroad situation.

In haste,
Cordially and sincerely yours,
WOODROW WILSON.

Several of the Justices of the Supreme Court were quoted as saying they regarded him as the ablest Solicitor General who had appeared before that body within their recollection. It was during this period that Chief Justice White called at the White House to pay him the extraordinary compliment of suggesting that the Chief Justice and his associates would welcome Davis' appointment to the court. As it happened, his name was placed at the head of a list of eligibles upon one occasion during the Wilson administration. Later it was removed. It was understood at the time that he had discouraged the proposal, having by that time become thoroughly enthused over his more active assignment.

There was a "daily dozen" class during the early days of the war which has since become historic. Its members included John W. Davis, Secretary of the Treasury William G. McAdoo; the late Franklin K. Lane, then Secretary of the Interior; Secretary of Labor William B. Wilson, Attorney General Thomas Watt Gregory; George Carroll Todd, Assistant to the Attorney General; First Assistant Postmaster General John C. Koons, Undersecretary of State Frank L. Polk, Assistant Secretary of Labor Louis F. Post, Commissioner of Internal Revenue Daniel E. Roper,

Comptroller of the Currency John Skelton Williams, Postmaster M. O. Chance of Washington; George Otis Smith, director of the Geological Survey; Assistant Secretary of the Navy Franklin D. Roosevelt and several others. Each morning before going to their offices the members of the group would assemble in the rear of the home of Representative William Kent, near the Interior Building, and work out for an hour under the personal direction of Walter Camp, who had come to Washington for conferences in connection with the physical training of the civilian army. For variety there would be an occasional cross-country run through Potomac Park, nearby. This was the way they kept in trim for the grind of war activities.

CHAPTER XII

BEFORE THE SUPREME COURT

Among many cases argued by John W. Davis as Solicitor General (1913-18) were a number of more than ordinary public interest. The full list is a lengthy one and covers a wide range, including the all-important subjects of trusts and monopolies, conservation, interstate commerce, income taxes, internal revenue, the war powers of the Government, prohibition, child labor, treaties, espionage, claims against the United States and the constitutional powers of the states. Under these general heads came the Harvester Trust and Steel Trust cases; the pipe-line, anthracite coal and several other cases arising under the Interstate Commerce Act; the so-called Five-Percent. cases arising under the tariff act; and the Adamson Act and Selective Service Act test cases. One of the most vital from the viewpoint of national security was the Midwest Oil case, involving the right of the President without specific sanction of Congress to withdraw from entry public lands thought to contain mineral deposits. Another case argued during this period involved the validity of the Oklahoma "grandfather clause," which

the Supreme Court of the United States subsequently declared unconstitutional. The Federal child labor law, which Davis defended, was likewise held unconstitutional by the Court.

When the Midwest Oil case arose it was little dreamed that the lands in litigation would later figure in a congressional inquiry or become the subject of a governmental scandal. Specifically it involved the validity of an order proclaimed by President Taft withdrawing from entry without express statutory authority several million acres of the public domain in Wyoming and California. The action in question was taken following the classification of these areas by the United States Geological Survey as "mineral bearing." Although legislation was eventually enacted authorizing the withdrawal, the Midwest Oil Company, a Standard subsidiary engaged in extensive operations in Wyoming, contended that the Taft order was illegal and that it had a right accordingly to enter and exploit the Wyoming oil areas so withdrawn. In the Supreme Court's decision, both the power of the President to order such withdrawals and the legality of the particular order in question were upheld.

In presenting the Government's case, the Solicitor General cited precedents as well as a line of favorable court decisions supporting the Government's contention, arguing also that congressional acquiescence is implied under the theory that the Executive must be empowered at all times to protect the national interest.

"Did the Constitution mean to lock up the power over public property so exclusively in Congress that the executive head of the nation

could not touch it, use it, or deal with it in any way, even for its protection, unless he could point to some statutory authorization?" Davis argued. "Are there no rights in its property and no purposes concerning it which may be presumed to be the rights and purposes of the Government, when Congress has neglected to legislate? Must the President, beholding the lands devastated by fire, or invaded and despoiled by trespassers, stand motionless and helpless because Congress has neglected to say how, in its desire, such situations shall be treated?* * * A scheme of government which neglected to provide for the contingencies which in our government can only be met by this implied power of action would be so far defective and unreasonable."

The Supreme Court decision represented a complete victory for the Government, confirming its title to the Wyoming (Teapot Dome) and California naval oil reserves created by President Wilson from the lands withdrawn by his predecessor.

In the Harvester trust case, another of those personally argued by Davis as solicitor general, the United States district court for the district of Minnesota had held that the International Harvester Company, International Flax Twine Company, Western Steel Company, Wisconsin Lumber Company, Illinois Northern Railway Company, Chicago, West Pullman & Southern Railroad Company, Cyrus H. McCormick, James Deering, George F. Baker, Norman B. Ream, Charles Steele, Elbert H. Gary, George W. Perkins and certain other individuals had combined and conspired in violation of the Sherman Anti-Trust Act to create an unlawful restraint and monoply of interstate trade and commerce in agricultural implements; and ordered that if the entire combination and monopoly were not dissolved within 90 days a receiver should be appointed for all of the properties of the corporate defendants. The latter appealed to the Supreme Court of the United States. This case was twice ar-

gued in the Supreme Court. It involved the troublesome questions of what constitutes "unreasonable" restraint of trade, and whether a "good trust" should be considered in the same category as a "bad trust." Before a decision was reached, the defendants, on October 21, 1918, consented to a dissolution of the combination in question, and the Government dismissed the appeal.

In presenting the Government's case Davis argued that the Anti-Trust Act, which he characterized as "the work of perhaps the ablest Judiciary Committee that ever sat in either branch of Congress," represented "the deliberate effort of conservative, clear-thinking men to place some reasonable check on that liberty of combination which, if permitted to the 'logical extreme', would in the end imperil liberty itself."

There were six pipe-line cases before the Supreme Court. The defendants included the Ohio Oil Company, Standard Oil Company, Standard Oil Company of Louisiana, Prairie Oil & Gas Company and Tide Water Pipe Company, Ltd., all members of the Standard group. These contests involved the construction and constitutionality of an amendment to the interstate Commerce Act declaring that "the provisions of this act shall apply to any corporation or any person engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water,* * * who shall be considered and held to be common carriers within the meaning and purpose of

this act.'' As Solicitor General, Davis contended that the amendment applied to all oil-carrying pipe lines engaged in interstate commerce. The Supreme Court, sustaining this position, held that the pipe line companies were common carriers and subject to the act, thus for the first time bringing them under the jurisdiction of the Interstate Commerce Commission.

One of the cases which attracted wide attention at the time because of the issue involved was a test case brought under the Adamson Act passed in the fall of 1916. This is commonly known as the eight-hour case —Wilson, United States Attorney for the Western District of Missouri vs. New el al., Receivers of the Missouri, Oklahoma & Gulf Railway Company (243 U. S. 332)—and involved the constitutionality of the law establishing a standard eight-hour workday for train crews on common carriers engaged in interstate commerce. The measure had been enacted on recommendation of President Wilson in the belief that it would avert an imminent nationwide strike of railroad employees. The railroads of the country fought the legislation on constitutional grounds, declaring it was not a regulation of Interstate Commerce; that it violated the Fifth amendment to the Constitution; interfered with the liberty of contract and was confiscatory, and lacking in equity. The ''workability'' of the act also was challenged. In its decision the Supreme Court overruled all of these objections and in every respect upheld the validity of the law, the effect of which, it declared, was to establish a permanent eight-hour standard for work and wages and to fix a scale

of minimum wages during a limited period defined by the Act. It declared the measure represented a proper exertion of the authority of Congress compulsorily to arbitrate the dispute between the railroads and the employees,—a power exerted by direct legislative act instead of by the enactment of other appropriate means to the same end.

Several cases were taken to the Supreme Court to test the validity of the Selective Service Act passed by Congress in May, 1917, as a preliminary to raising the army which turned the tide of the World War. In these cases the defendants were indicted and convicted for failure to register. The defendants claimed that Congress lacked the power to compel military service, that the act infringed the provisions of the Constitution respecting the militia, delegated Federal power to state officers, vested legislative and judicial power in administrative officers, interfered with the religion of individuals and imposed involuntary servitude in violation of the provisions of the Federal Constitution. The Court decided for the Government on all points. In one of the cases argued by Davis before the Supreme Court the defendants were Emma Goldman and Alexander Berkman, charged with conspiracy to violate the Selective Draft Act by dissuading persons from registering. The law was again upheld.

In the Steel Trust case the Government brought suit against the United States Steel Corporation, Federal Steel Company, Carnegie Steel Company, Carnegie Company of New Jersey, American Steel and Wire Company, American Tin Plate Company, National

Steel Company, National Tube Company, American Steel Hoop Company, American Sheet Steel Company and numerous other companies, all subsidiaries of the United States Steel Corporation, charging that they constituted a monopoly in violation of the Sherman Anti-Trust Act. Among the individuals named as co-defendants were John D. Rockefeller, J. P. Morgan, Andrew Carnegie, E. H. Gary, John D. Rockefeller, Jr., William H. Moore, George W. Perkins, Edmund C. Converse, Norman B. Ream, P. A. B. Widener, Daniel G. Reid, Henry C. Frick, Charles M. Schwab and Charles Steele. A final decree was rendered by the Federal district court dismissing the case. The Government appealed to the Supreme Court, and in March, 1917, Solicitor General Davis appeared with other counsel to argue for a reversal of the decree. In March, 1920, fifteen months after he had retired as solicitor general, the decree of the district court was affirmed by the Supreme Court in a 5-to-4 decision.

Some $61,000,000 worth of Indian lands in Oklahoma were saved for the Choctaws and other tribes in another case—Missouri, Kansas and Texas Railway Company vs. United States (235 U. S. 35). The lands had been granted to the Indians under treaty with the Government. The railroad company claimed an interest in them under the land grant act of 1866 in aid of railroad construction.

A number of other cases won for the Government during the same period involved interpretations of the income-tax and anti-trust laws.

CHAPTER XIII

AMBASSADOR TO THE COURT OF ST. JAMES

Five years' consecutive service as Solicitor General, covering substantially the entire period of the World War and the months preceding its outbreak, brought Mr. Davis into frequent contact with the White House and even more intimate personal association with members of the Cabinet. There were numerous conferences concerning the legal aspects of America's entry into the conflict, others relating to emergency legislation, and still others pertaining to various necessary and at times unprecedented steps taken by the Executive and his advisers after the United States became a belligerent. Opinions were often required regarding measures which it was desired to adopt in furtherance of the war program, and the advice of the Solicitor General was regularly sought. These services behind the scenes, as well as those of a more visible nature, won not alone the respect but the regard of President Wilson.

Meanwhile, as an outgrowth of official and social contacts, a fast friendship developed between the Da-

vises and Lansings. It will be recalled that the break between the wartime President and his Secretary of State did not occur until almost a year after the conclusion of hostilities, and their relations remained cordial until the Peace Conference at Paris in the winter of 1918-19. When, therefore, diplomatic developments in the summer of 1918 called for the selection of an American High Commission to treat with the German government for an exchange of war prisoners, both President Wilson and Secretary Lansing turned to Davis, agreeing without difficulty upon his appointment as one of its members.

As the war was then in progress his sailing was kept secret by the State Department, and it was not until after he had reached Berne, Switzerland, where the conference was scheduled to begin September 23, that his arrival was announced. His American associates on the commission, John W. Garrett, Minister to the Netherlands (chairman); Major General F. J. Kernan for the Army and Captain H. H. Hough for the Navy, had already met him in Paris, and the preliminaries were well under way.

Before the announcement came, however, other moves were taking place behind the curtain of official censorship. A series of cable messages were being exchanged between Washington and Paris of which the American public knew nothing. The first of these reached Davis in London, in the form of an official communication from the American embassy in Paris signed by Arthur Hugh Frazier, counselor of the embassy. It read:

"PERSONAL AND CONFIDENTIAL

"Paris, September 2, 1918

"The Honorable John W. Davis,
Care of The American Embassy,
London.

"My dear Sir:

"The Ambassador being away from Paris on leave of absence has requested me to transmit to you the following two telegrams:

(1)

"Please deliver immediately if necessary by messenger to London the following personal message from John W. Davis' wife:—'I insist you accept the President's offer regardless of personal interests or sacrifice. You must not decline.'

(2)

"Please communicate following to Hon. John W. Davis as soon as possible, sending a messenger to London if necessary:—'I am directed by the President to ask you if you would accept the Ambassadorship to Great Britain tendered you. This is done after consultation with Gregory who, though feeling deeply that he cannot fill your place, has given his unqualified approval to offering it to you. I need not say how earnestly I hope you will accept not only because I know well that you have every qualification for the position but because it would be most gratifying to me personally. You cannot render greater service at this time and I unhesitatingly urge you to do so because your country needs you.

" 'The President requests you to keep this matter entirely secret and not to telegraph Mrs. Davis, but I am authorized to tell her and will send any message to you which she may desire. Reply as soon as possible by telegraph through Embassy. Lansing.'

"Very truly yours,

"ARTHUR HUGH FRAZIER."

To the recipient the message came as a surprise, and was read with mixed emotions. Walter Hines Page, one of the long line of distinguished Americans who had represented the United States at the Court of St. James, had submitted his resignation a short time before on the score of failing health, and desired to be relieved as soon as a successor could be named. Davis, however, had been unaware that he was under consideration for the impending vacancy. Returning to the Claridge's Hotel, he wrote the following reply:

"Lansing, Secretary of State,
Washington, D. C.

"Arrived this morning. Have your message. Needless to say am profoundly grateful to all concerned. Have serious doubt of my adaptability which only your confidence and that of President coupled with duty of service could persuade me to ignore. Unless situation has been greatly exaggerated, however, financial reasons alone would seem to be prohibitive. My resources are meagre as you know. Can you give me any light on this point and tell me when definite answer should be returned. Am leaving for Paris Monday night. Am I free to discuss matter with Sharp. Please ask Nell to consider as affecting Julia's education and whereabouts.

"DAVIS."

The message was duly sent. A day or two thereafter came a cabled answer from Lansing, in Washington, supplying the information requested and again urging acceptance:

"September 7, 12 Noon.

"Urgent 1234

"Your 1690, Sept. 6, 11 P. M. Urgent. Strictly confidential. For Honorable John W. Davis Prisoner of War Mission Quote—special cipher—

"Your eminent fitness beyond question (period) Understand that financial demand is between thirty and thirty-five thousand per annum (period) I know that it would be a great sacrifice but unhesitatingly say that I feel it your duty to accept (period) I have discussed this feature with your wife who agrees absolutely that you ought to accept in spite of financial sacrifice (paragraph)

"As I understand it your obligation need not be for longer than two years (comma) that is until the end of the present Presidential term (period) With that in mind I most earnestly beg you to authorize me to say to the President that you will accept (paragraph)

"You may discuss the matter with Sharp and send me a telegram of acceptance by Wednesday the eleventh in Sharp's private code which gives you entire freedom of expression although I hope you will decide to accept before it is too late.

"LANSING."

Returning to Paris, the head of the War Prisoners mission conferred with Ambassador William G. Sharp, who likewise urged acceptance. Another message arrived from Mrs. Davis, in Washington, answering questions which had arisen as to the bearing of a foreign assignment on the education of their daughter, Julia,

then in college. Despite doubts and objections, he yielded. The reply was cabled back:

Code Message.

Paris, France, September 11, 1918.

"Lansing, Deartment of State,
Washington, D. C.

"Your most generous answer to my cable reached me late Sunday. Such doubts as remained were removed by conference with Sharp and wife's cable last night. You may say to President accordingly that I will accept. I trust I fully appreciate both the great honor and the corresponding obligations, and shall do my best to vindicate my selection. Will act under your further instructions, but think I must come home within a reasonable time to put my affairs in order. Our commission will be here for a week or ten days longer. First full conference yesterday. Satisfactory progress, and detailed work begins today. Personnel impresses me favorably.

"DAVIS."

A week later, on September 18, official announcement was made through the State Department in Washington of the appointment of John W. Davis as ambassador to Great Britain, succeeding Mr. Page. While a surprise in many quarters, as indicated by press comment at the time, the selection was welcomed on both sides of the Atlantic. In both England and the United States it was agreed that the new ambassador possessed qualifications fitting him for the post. Albert W. Fox, writing in The Washington Post—later edited by George Harvey, who succeeded Davis as ambassador—summarized the viewpoint of the Capital in a copyrighted article saying:

"President Wilson, in appointing John W. Davis, the Solicitor General, to succeed Walter Hines Page as Ambassador to the Court of St. James, has not only selected the right man for the right place but has placed at the head of America's diplomatic service a man who is truly representative of America's firm resolve to crush German military power without thought of cost or sacrifice. It is doubtful if there is a man in public life today who has a more genuine and a more intense loathing of all things connected with the present German system of government than Mr. Davis.

"The announcement of the appointment came as a welcome surprise. For some reason the name of Mr. Davis had not been associated with the embassy at London, although he had frequently been regarded as a likely choice for diplomatic appointments in the past.

"Secretary of State Lansing, who is a warm personal friend of Mr. Davis and probably had much to do toward recommending the appointment and persuading Mr. Davis to accept, made the announcement yesterday. * * * *

"Spontaneous approval went up at once when the appointment became known. Certain jocund political opponents of the administration said they never would have guessed that such a timely and excellent appointment could be forthcoming. * * * *

"In British diplomatic circles satisfaction over the appointment was clearly in evidence. Through some means it has become known to many of the diplomats that Mr. Davis hates Germany worse than almost any other man in public life, and that no one sees clearer through the subterfuge and sham characterizing German diplomacy than Mr. Davis, whose legal mind has been for years trained in distinguishing between right and wrong, no matter in what guise the wrong appears."

It was further announced by the State Department that the appointment would not interrupt the negotiations at Berne, and the new ambassador continued to direct the negotiations relating to an exchange of war prisoners between Germany and the United States until their conclusion, coincident with the signing of the armistice. Dr. Page, whose strength was rapidly waning, left London October 3, and a few months thereafter died in New York. Ambassador Davis arrived in London December 16 to assume his diplomatic duties, and two days later was formally installed.

There was one important factor in his decision to accept the ambassadorship which did not appear in the record. In the spring of 1916, John J. Davis had passed away in Clarksburg at the age of 81, with his family gathered about him. Realizing that his hour had come, the elder Davis summoned his physician, Dr. Johnston, and his son, first asking his wife and daughters to leave the room. Taking the physician

by the right hand and his son by the left, as he lay on the pillows, he said:

"Doctor, there's something I want to say to you. I've been wanting to say it for a long time. And you, too, John—I want you to hear it."

Then for twenty minutes the dying man preached to the two whose hands he held. He discussed life's fundamentals. He had a message. The tears were coursing down the physician's leathery cheeks. He looked across to see the son's eyes blurred. They listened without speaking. The patriarch lay back at last, saying as he did so:

"I hope I haven't offended you."

One year later Anna Kennedy Davis likewise died in the Lee Street house just as Spring was breaking. From the day of her husband's death she had seemed to wither.

When the call to London came, therefore, the son was free to accept.

II

"That famous after-dinner team of Davis and Reading," as Lloyd George once described it, became almost an institution during the service of John W. Davis as ambassador to England. Although absorbed in the exacting duties of his office, the new American representative at the British capital did not neglect the important function devolving upon all diplomatic officers to promote at every opportunity a feeling of friendship for his own country. That he found frequent occasion

to do so is attested by a score of felicitous public addresses delivered before organizations such as the American Society, the Society of Pilgrims, the Association of British Chambers of Commerce, the Scottish-American Association, the English-Speaking Union and Oxford University. Lloyd George's humorous reference was inspired by the fact that the American ambassador often appeared on the same program with the Earl of Reading, who had lately returned from a tour of service as British ambassador to the United States. Their bantering thrusts, varied with personal encomiums, caused audiences to look forward to their joint appearance with an anticipation which was seldom disappointed.

Ambassador Davis assumed his duties at a particularly difficult period and under trying conditions. Dr. Walter Hines Page, who preceded him, had not only served with distinguished success but endeared himself to the British people in their hour of exaltation. It was incumbent upon the new ambassador to maintain the same high standard and uphold the best traditions of American diplomacy during a season in which both nations were passing through an emotional and intellectual slump representing the reaction from the war.

Reaching London but a little more than a month after the signing of the armistice, he found the overseas war organization at its peak. The embassy staff, which ordinarily consisted of a counsellor, several secretaries, military and naval attaches and a handful of clerks, had expanded under pressure of war neces-

sity to many times its normal size. There were some 250 officials and subordinates directly under the Ambassador. All the European activities of the American navy were directed from London. Admiral William S. Sims, the stormy petrel of the naval establishment, famed for official indiscretions, was acting in the dual capacity of naval attache and chief of operations of the American naval forces. J. Butler Wright and Irwin Laughlin, both career men in the diplomatic service, were assigned to the embassy as counsellors. Laughlin, who had served in that capacity during the war, was detailed to new duties shortly after Davis reached London, while Wright remained as counsellor during his tenure as ambassador. The official embassy staff at that time comprised three secretaries, three second secretaries, three third secretaries, a commercial attache, a trade commissioner, a naval attache and five assistants, and a military attache and four assistants. In addition there were numerous clerks, stenographers and special agents.

It was always Ambassador Davis' desire that all activities of the American Government should be concentrated under the head of the chief of the diplomatic mission, not for purposes of autocratic administration, but in the interest of greater coordination and efficiency. Without interfering with the autonomy of the various organizations concentrated in London he was enabled by this policy to bring them into closer cohesion.

Whenever possible direct methods were employed to serve Americans calling upon the Embassy for as-

sistance, and through personal contacts established with officials of the British Foreign Office and informally with other administrative departments much circumlocution was avoided. It was necessary to introduce reforms with extreme care, however, to avoid offense to British officialdom, as it is a basic principle in the practice of diplomacy that all contacts between the ambassador of one government and the government of the country to which he is assigned shall be made through the medium of the Foreign Office. Under the old diplomacy, if the Embassy desired to communicate with the head of the Shipping Commission in behalf of an American claimant it was customary to address a letter to the Secretary of the Foreign Office saying in substance: "My dear Lord Gumdrops:—I have the honor to advise that Mr. Skipper, an American citizen, desires to effect settlement of a shipping claim, and shall welcome your advices as to the procedure to be followed. With assurances of my most distinguished consideration" etc., etc. Some weeks or months later a reply would come from the Foreign Office conveying the information that the communication in question had been referred to the Commissioner of Shipping. By the time the British government got around to the point of settlement, if at all, the American claimant usually would have returned home in despair. Under the new diplomacy, given a distinct impetus during the Davis regime, British and American officials got into the habit of calling up by telephone instead of writing letters. An American actually appealed to the Embassy one day for assistance in

obtaining settlement of a shipping claim of considerable proportions. An attache took down the receiver: "Hello, Bill, Mr. So-and-So is here with a shipping claim. How can we handle it?" "Send him down to see Blank," was the reply. "I'll call up and tell him he's coming." The American left, to return next day with his face wreathed in smiles. The British official had taken him out to lunch, a favorable settlement had been agreed upon and he was going home happy. By virtue of the friendly feeling existing between the American embassy and British officials surprising results were accomplished in connection with American claims of this character.

Close personal relations existed between Ambassador Davis and the Foreign Office, Lloyd George, and in fact all members of the Cabinet. Lloyd George he knew well, and there was a marked cordiality in their contacts. Ambassador Davis also had the happy faculty of making warm friends not alone among officials of the executive departments but with members of Parliment. In addition, his personal qualities and standing in the legal fraternity enabled him to form close friendships with Scottish and Irish peers and members of the bench. These and other unofficial activities made a profound impression upon the people of Great Britain, winning new respect for the American mentality and American character.

During the negotiation of the Treaty of Versailles President Wilson summoned him to Paris for a number of conferences. He was given immediate charge of the Rhineland settlement and wrote this portion of

the treaty. Later on, when it became apparent that the Senate would not ratify the document, he faced the delicate and difficult task of maintaining American prestige at the British court. According to associates of that period he succeeded to a remarkable degree, preserving his own dignity and that of the government he represented, while never faltering in his devotion to the invalid in the White House. Although accepting the assignment in the first place at a pronounced personal sacrifice, he remained at his post until the change of administration in the Spring of 1921.

Three unusual honors of a personal and unofficial nature came to him during his service abroad. In 1920 he was chosen president of the Birmingham and Midland Institute, a distinction previously conferred upon only three predecessors in office—Messrs. Lowell, Choate and Page. A year earlier, when he had been in England but a little more than a month, he was made an honorary bencher of the Honorable Society of the Middle Temple. Only one other American ambassador, the late Joseph H. Choate, had been similarly honored. Until Mr. Choate's selection, no non-British subject had been accorded a place on the governing body of the Parliament of the Inn, the oldest and most notable body of barristers in the British Empire. He was also made Senior Warden of the Grand Lodge of Freemasons of England, a unique distinction never before conferred upon a foreigner.

Five of the signers of the Declaration of Independence—Edward Rutledge, Thomas Lynch, Thomas Heyward, Arthur Middleton, and Thomas McKean—were

members of the Middle Temple and at least five Middle Templers became chief justices of the Supreme Court of the United States in the early days of the American Republic. The list included Benjamin Chew, Thomas McKean and Edward Shippen of Pennsylvania; John Rutledge of South Carolina and Benjamin Lynde of Massachusetts. Peyton Randolph, who afterwards became president of the Continental Congress, and his younger brother John, respectively became members in 1739 and 1745. In the following year Thomas Child, attorney general in North Carolina, crossed the Atlantic while in office to become a member of the Inn. In 1777 another attorney general, James Simpson of South Carolina, eldest son of the chief justice of Georgia, likewise became a member. There was thus a close connection between the Middle Temple and the American Colonies for many years prior to the Revolution, and its members played an important part in the formation and development of the new Republic.

When John W. Davis was assigned to London, British statesmen were prepared to extend him a cordial welcome. It was known that he had served with distinction in the legislative and executive branches of the American Government, and that he possessed an intimate knowledge of the American judiciary. He was likewise recognized as an authority on the American Constitution and a lawyer of international note. Even in England, where men are reared for statecraft, her statesmen seldom achieve a similar eminence at so early an age. The experiences which marked his departure for the United States in March, 1921, testified

to the increased regard resulting from his service. Cabinet members, representatives of the Foreign Office, members of Parliament and numerous lesser dignitaries went to Waterloo station to see him off. Mrs. Davis was showered with flowers. As their ship left the harbor at Southampton it was escorted by forty British destroyers led by the flagship of the British fleet. Whistles blew, flags were dipped and the fleet cheered in his honor.

CHAPTER XIV

BROKE

After ten years in public life John W. Davis returned to the United States in 1921 facing a problem. He had exhausted his capital while in the government service. Once more a private citizen, he found himself without an income, without a law practice, and "broke." The Lansing estimate had been accurate. Living as modestly as an ambassadorship permitted, and serving at a time when official entertaining was at a minumum, two years and a half in London had still cost approximately $75,000 in excess of salary and allowances as ambassador. His resources had been wiped out completely. The situation demanded attention.

There were two alternatives. He could go back to West Virginia and reenter practice there, picking up where he had left off in 1913 when appointed Solicitor General, or accept an attractive offer to enter practice in the wider field of New York. Looking ahead to the political possibilities, some of his friends urged him to return to West Virginia. The decision, however, ignored political considerations entirely. Neither

then nor later was the political equation to be permitted to enter into the question of a law practice, either as to location or character of clientele. He returned to the law as a lawyer, and located in New York.

For several years a tentative plan had been forming in his mind to practice law in New York upon retiring from the Government service. In 1916, while Solicitor General, friends had suggested that a good opening awaited him there. There were a number of tentative offers. Early in 1917, shortly before the United States entered the war, an especially attractive proposal reached him through a friendly channel. After considerable deliberation an answer was returned that the question would have to be held in abeyance until it was determined definitely whether or not war were coming; that if the United States were to enter the conflict he would not feel free to consider any personal proposal until hostilities should cease. Bernsdorff had been dismissed and the spectre of war hovered over the national capital at the time. When it came a few weeks later he gave up all thought of engaging in private practice.

As a sequel to these discussions Frank L. Polk broached the subject in London some two years later, and when Davis returned to the United States on leave of absence in 1920 their conversations were renewed. Polk had received an invitation to associate himself with Stetson, Jennings and Russell, of New York, the law firm of which Grover Cleveland had been a member, and it was suggested that when Davis relinquished his ambassadorial duties there would be an opening

for him in the same office. The prospect offered a congenial and honorable association with a group of professional associates who enjoyed the highest standing at the bar and in the business world, and was attractive from every viewpoint. Thus it was that shortly after his return from London he became associated with the New York firm, later becoming its head. In the succeeding three years he engaged in general practice, declining incidentally a number of proffers to associate himself exclusively with large business interests. As in Clarksburg, the office door was open to all clients alike.

A little more than a year after his return from London he was elected president of the American Bar Association. Back of his choice lay an interesting incident. The movement in his behalf, if it did not have its inception in Clarksburg, was actively encouraged by Harvey F. Smith of that city. Shortly before the American Association's annual meeting at San Francisco in 1922, John W. Davis was called to Clarksburg by the death of a friend. While there Smith called by telephone to suggest that if he would prepare a list of fifty friends well scattered over the United States, the Clarksburg lawyer would undertake a campaign for his election as President of the Association.

"Give me a day to think it over," Davis replied. Two days later Smith received a letter from New York, dated July 5, 1922. Davis wrote:

"I take my first opportunity on my return to New York to continue our telephone conversation of yesterday. My feelings on the subject are somewhat mixed. In common I take it with every other member of the Association, I would consider it a very high honor to be elected

president. On the other hand, it seems to me the sort of office that ought not to be made the subject of a campaign. It really ought to be made the blue ribbon of the Bar, to be awarded very much after the fashion of a judicial promotion. This may be a counsel of perfection, but nevertheless is the end, it seems to me, at which we should aim."

Smith and other friends nevertheless proceeded with plans to bring about his election and saw their efforts crowned with success. The influence of William Howard Taft, Chief Justice of the Supreme Court of the United States, was exerted unofficially toward the success of the enterprise. While debarred by the exalted character of his office from actively participating in the politics of the convention, the Chief Justice spoke in the highest terms of Davis' personal and professional qualifications, and his attitude was an important factor in the result. An active backer at the time was Thomas Shelton of Norfolk, Virginia, a classmate at Washington and Lee and a member of the executive committee of the American Bar Association.

Davis' election, after practicing only a year in New York, recalled a conversation which occurred at the preceding convention of the American Bar Association, held in Cincinnati in 1921, between the Clarksburg lawyer and Elihu Root. Smith called attention to the fact that Davis was entering practice in New York, and suggested that Root might be helpful. The elder statesman replied:

"Mr. Smith, Mr. Davis needs no introduction to the New York bar. Sir, he is one of the most promising men who has come to the New York bar in the last twenty years. You will hear from him."

Upon retiring as president, August 29, 1923, Davis

delivered an address on the Constitution and current tendencies to amend it which attracted wide notice. In the same address he emphasized his support of the Norris amendment to bring Congress into session on the first Monday in January following its election and to advance presidential inauguration to the same date, and proposed two other Constitutional amendments, one to permit the President to veto separate items in the appropriation bill and the other to permit ratification of treaties by a majority instead of a two-thirds vote of the Senate. At the same time he vigorously assailed the La Follette proposal to give Congress the power to override decisions of the Supreme Court.

Shortly after his election as president of the American Bar Association a second opportunity was presented to become a member of the United States Supreme Court. As when a similar proffer came during the Wilson administration, however, it found him wedded to the active practice of his profession and disposed to discourage the proposal. President Harding subsequently appointed Pierce Butler of Minnesota to the then existing vacancy.

In December, 1922, during hearings before the House Foreign Affairs Committee in Washington on the Rogers bill for the reorganization of the diplomatic and consular service, the former ambassador threw additional light on the cost of a diplomatic career. Describing his own experience in London, he said:

"I am quite sure that my establishment in London was more modest than that of any other ambassador there. My house was not large;

my whole establishment was the most modest. I did not do a great deal of entertaining. I did only that which was indispensable to return the courtesies which I officially received. Of course, you can not always take and never give. You must entertain the officials of the Government who entertain you to be recognized as on a friendly footing with them.

"I paid as rent for my own house $8,000 in round figures. There was also a very low rate of exchange which I had in my favor the whole time, the low rate of exchange on the pound sterling, which went once as low as $3.30 and ran from that to $4.10, and up and down. Living as I was without any ostentation it cost me roughly for the expenses of myself and family, which is small, three times my salary every year I was there, between fifty thousand and sixty thousand dollars. I do not believe anybody could possibly have done it decently with any less expenditure. When a man goes abroad as a representative of the United States, which the people on the other side of the water believe to be an El Dorado, I can assure you he pays the highest market rate, and perhaps a little more for everything he gets, and he cannot, of course, as a representative of a dignified and great country, get down to haggling with his butcher or grocer about his bills. He is simply compelled to pay what he is charged, and he is charged on the theory that he represents the richest country on earth. You cannot get away from that situation. There it is, and nothing that can be done on this side of the water can change it."

CHAPTER XV

"FOOL FRIENDS" AND A LETTER

As to the genesis of the Davis-for-President movement there is more than a little doubt. At the same time the successive steps which led to his nomination by the Democratic National Convention of 1924 are clearly marked. In its practical aspects the project had its inception in West Virginia in 1920, first in a decision by the Democratic State Executive Committee to get behind it, and second in the formal launching of the Presidential boom in Clarksburg. Far back of this there is a record of college pleasantries relating to the possibility that a popular graduate of Washington and Lee University might one day occupy the chair of the Chief Executive in Washington. Several years before the Clarksburg enterprise was launched Clem L. Shaver of Fairmont had also told political associates that "John Davis will be President of the United States someday if people ever get to know him." In a political sense, however, such things have slight significance, and it was not until 1920 that Shaver and other admirers put the thought into action. Previously, on June 24, 1919, at Shaver's suggestion, Editor C. E. Smith of

the Fairmont (West Virginia) Times published an editorial proposing John W. Davis for President and concluding with this significant paragraph:

"Friends of John W. Davis should immediately make their plans to launch a boom that will lead to his nomination."

This represented the first embodiment in definite form of an idea which had been slowly germinating for several years. The following spring a Davis-for-President program was set in motion. At a special meeting of the Democratic State Executive Committee held in Parkersburg on March 9, 1920, at which Shaver presided as chairman, a resolution presented by W. Guy Tetrick of Clarksburg was adopted, placing the state organization on record in the following language:

"Whereas, his services in Congress and as Solicitor General of the United States and his distinguished career at the Court of St. James, at the most crucial and trying period in the history of the United States, have given the Hon. John W. Davis a wide acquaintance and a merited reputation as a man of sterling character, of exalted ability and of a high order of statesmanship, and,

"Whereas, his availability, personal qualities, great fitness, and splendid equipment are recognized in all parts of the nation, therefore,

"Be It Resolved, that it is the sense of the Democratic State Executive Committee of West Virginia and of other citizens of the state here assembled, that the best interests of the United States and of Democracy require that the Hon. John W. Davis be the next President of the United States, and we hereby invite the active co-operation of all citizens of the United States in a common endeavor to secure his nomination and election to this great office."

Thereafter the chronology of the movement is developed as follows in a compilation by Ray W. Garvin, one of its sponsors, in the Clarksburg Exponent:

On March 29, 1920, at an informal conference in the law office of E. G. Smith in Clarksburg, a call was issued for a general meeting to be held in Clarksburg, April 2, to organize a Home Town Davis-for-President Club. The participants in the preliminary meeting included

Fred L. Shinn, J. Phillip Clifford, E. F. Garrett, Olandus West, George W. Bland, Carl W. Neff, Percy Byrd, E. G. Smith and Howard L. Robinson.

Pursuant to the call, several hundred enthusiasts gathered in the Clarksburg Court House on the date scheduled. Dr. J. W. Johnston, the Davis family physician, once more comes on the stage as chairman of the gathering. John W. Davis was referred to by various speakers as "the next President of the United States." Tributes were paid by E. G. Smith, Major Louis A. Johnson, Judge James W. Robinson and Percy Byrd of Clarksburg; by Shaver, chairman of the state committee, Clifford R. Snider of Morgantown and J. H. Edwards of Weston. A telegram was received from M. M. Neely, at that time a member of Congress and later elected to the Senate, saying, "I have been able to obtain pledges of support for our distinguished fellow citizen from Texas, California, North Carolina, Arkansas, and Florida, while I have been given most encouraging assurances from members of Congress from a number of other states." At this meeting, the Home Town Davis-for-President Club was organized with approximately one hundred charter members. That was the real beginning of the movement which reached its climax in July, 1924. The first officers of the club were Stephen G. Jackson, president; E. F. Garrett, Dr. J. W. Johnston, and Percy Byrd, vice presidents; J. Phillip Clifford, secretary; Hugh Jarvis, treasurer; W. I. Booth, chairman finance committee; H. E. Davisson, secretary finance committee; Ray W. Garvin, chairman of publicity.

From that start, the movement spread. Other Davis clubs were formed in various parts of the state.

Meanwhile a spontaneous sentiment for the West Virginian's nomination was developing outside of West Virginia. On May 15, 1920, Mark Sullivan, a Washington political writer, observed in an article which was widely read: "If an energetic group of Democratic leaders should get behind Mr. Davis, the movement to nominate him would go a long distance." A week later, on May 23, The New York Times, under the caption "A Great Democrat," printed a three-column editorial endorsing Davis for president and urging his nomination by the San Francisco convention. An avalanche of comment followed.

On May 25, in the West Virginia primary, notwithstanding that he had not filed as a candidate, more than

4,000 Democrats wrote the name of John W. Davis on their ballots as their preference for president. Although delegates to the San Francisco convention of that year were not instructed, all of them supported the states' favorite sons to the last ballot.

It was the opinion of many political writers that had the deadlock of 1920 persisted as it did four years later, John W. Davis probably would have been chosen as the presidential nominee of his party at that time. The withdrawal of A. Mitchell Palmer of Pennsylvania and the unquenchable enthusiasm of the Cox following, however, resulted in the nomination of former Governor James M. Cox of Ohio on the forty-fourth ballot. The West Virginian's strength in the convention reached its high-water mark with a total of 76 votes on the 40th ballot. While disappointed over the outcome, the West Virginians returned home feeling they had at least made some progress in the promotion of his cause and content to wait four years until the next convention. The Home Town Davis-for-President Club thereupon ceased to function and was not re-organized until late in 1923.

II

In the interval from 1920 to 1924 John W. Davis grew steadily in popular favor. He was under constant pressure to deliver public addresses. Moreover, he was personally known to most political leaders of consequence in the Democratic party and by reputation to every lawyer in the country. The ramifications of

Mrs. John W. Davis, from a photograph taken while living in Washington

a wide personal acquaintance reached into every state. However, there was a formidable obstacle to his political advancement in the circumstance of his New York law practice. One of the clients of the firm with which he was identified was the banking house of J. P. Morgan & Company. When politicians turned to discussion of presidential possibilities the conclusion was general that the "Morgan connection" was a fatal political handicap, considering the popular prejudice against so-called Big Business. This view was repeatedly heard during a meeting of the Democratic National Committee in Washington in January, 1924. On the sidelines of this gathering there was the inevitable discussion regarding the presidential outlook and the various active or potential candidates for the nomination. These discussions disclosed a consensus of opinion that Davis was unavailable for the Presidential nomination because of his New York law practice. A few weeks later there was set in motion a chain of circumstances which once more were to affect his political destinies.

In February, 1924, the present biographer, writing from Washington, addressed a personal note to John W. Davis in New York expressing the opinion that he could be nominated if the Morgan prejudice could be overcome, but otherwise could not expect to figure seriously in the convention. The wish was expressed that what many persons regarded as his essential democracy could be dramatized in such a way as to remove the "Wall Street taint." A second letter followed, enclosing a copy of a dispatch sent by the writer

to The Pittsburgh Post suggesting that it would be easier for the Democratic party to nominate him for President if he were in West Virginia practicing law or running for the Senate—the term of the Republican incumbent, Senator Davis Elkins, was expiring—instead of practicing law in New York. The second note and a reply to the first passed in the mails. The reply read:

"Dear Mr. Huntley:

"I have your note of the 12th and thank you for the interest which inspires it. I have never been much of a success at the drama, as perhaps you know. After all, the 'cool, sequestered vale of life' is not without its advantages. As for Wall Street, was it not Mark Twain who said that all its money had a double taint,—'taint yours, 'taint mine.

"Yours with regards,
"JOHN W. DAVIS."

By implication he refused to consider himself in the light of a presidential possibility and declined to discuss the subject from a personal angle. The letter was irritatingly good-humored, indicating an apparent acquiescence in the general verdict as to his unavailability and an intention to do nothing about it. Within a few hours a pointedly phrased answer had been dropped in the mails. It advanced additional arguments designed to convince him that he owed it to others if not himself to take some affirmative action to combat the prejudice in question. The writer concluded:

"I still think you can with dignity and decency and entire honesty trim your sails to what I believe to be a genuine demand for your candidacy."

Two weeks later came a reply which, far from the thought of its author, was to exercise a profound in-

fluence in the presidential politics of 1924. It was dated March 4th. The text follows:

"Dear Mr. Huntley:

"I have read with interest your two letters of February 20th and also the enclosure with letter No. 1. With renewed thanks for your interest, let me tell you how this thing looks to me.

"If I were in the market for the goods you offer, I would not complain of the character of this consignment, although I notice you do not guarantee delivery. The price you put on them, however, is entirely too high. You offer me a chance to be the Democratic nominee for the Presidency which carries with it in this year of grace more than a fair prospect of becoming President of the United States. In exchange, I am to abandon forthwith and immediately a law practice which is both pleasant and, within modest bounds, profitable; to throw over honorable clients who offer me honest employment; and desert a group of professional colleagues who are able, upright and loyal. If this were all, I would think your figures pretty stiff, but you are really asking something still more.

"I have been at the bar nearly thirty years, and with the exception of ten years spent in public life I have enjoyed during the whole of that time a practice of an extremely varied character.

"At no time have I confined my services to a single client, and in consequence I have been called upon to serve a great many different kinds of men; some of them good, some of them indifferently good, and others over whose character we will drop the veil of charity. Indeed, some of my clients—thanks perhaps to their failure to secure a better lawyer—have become the involuntary guests for fixed terms of the nation and the state. Since the law, however, is a profession and not a trade, I conceive it to be the duty of the lawyer, just as it is the duty of the priest or the surgeon, to serve those who call on him unless, indeed, there is some insuperable obstacle in the way.

"No one in all this list of clients has ever controlled or even fancied that he could control my personal or my political conscience. I am vain enough to imagine that no one ever will. The only limitation upon a right-thinking lawyer's independence is the duty which he owes to his clients, once selected, to serve them without the slightest thought of the effect such a service may have upon his own personal popularity or his political fortunes. Any lawyer who surrenders this independence or shades this duty by trimming his professional course to fit the gusts of popular opinion

in my judgment not only dishonors himself but disparages and degrades the great profession to which he should be proud to belong. You must not think me either indifferent or unappreciative if I tell you in candor that I would not pay this price for any honor in the gift of man.

"I do not challenge the accuracy of your political diagnosis. Fortunately, as I think, the decision as to my own availability or unavailability is one that I am not called upon to make and do not seek to influence, so even in spite of the alluring pictures that you paint I must stand by my philosophy.

"What is life worth, after all, if one has no philosophy of his own to live it by? If one surrenders this to win an office, what will he live by after the office is won? Tell me that!

"Believe me,

"Cordially yours,
"JOHN W. DAVIS."

In logic and morals the letter was unanswerable. Its finality brought a full stop to whatever thought might have existed that he would become an active or even a passive candidate for the Presidential nomination. He was out of the picture.—Or was he? As the letter was read and reread it seemed to the writer that, simply and spontaneously, he had done a thing no premeditation could have accomplished. Urged to dramatize his democracy, he had in an offhand letter dramatized his honesty. Yet how could it be used? It was a personal communication, the outgrowth of a private correspondence. On the other hand its political possibilities were clearly apparent. If it could reach the public it would wipe out the "Wall Street taint!"

Two weeks after its receipt, permission was sought to publish it. An answer came promptly:

"I have no objection to your making any use you choose of my letter to you, especially in view of the fact that the sentiments therein expressed are not subject to change. All I ask is that if you make excerpts they shall be sufficient to exhibit my entire meaning; indeed I would prefer the publication of all rather than a part, with perhaps some explanation in lieu of the first paragraph."

Done! The Pittsburgh Post published the letter in a Washington dispatch on March 30th. Copies were made available to the press associations and Washington correspondents. The New York World, Times, and Tribune, the Baltimore Sun, and numerous other papers printed the text in full. Its news value, considering the discussion of Davis in connection with the Presidency, carried it throughout the country. The reaction was instantaneous. A flood of editorial comment resulted, for the most part favorable. These initial expressions were succeeded by newspaper and magazine articles discussing Davis' availability for the nomination. Writers began to refer to him as a leading dark horse in the Democratic field. The Wall Street handicap, if not lifted, had been materially lightened. Thereafter the Morgan connection did not appear so formidable. Talk of Davis for President continued to grow in volume and significance from that time on until the convention met in June.

In the meantime friends were active in various states building up a Davis sentiment, and in West Virginia the Democratic organization, under Shaver's leadership, made certain of a Davis delegation. They perceived that the psychology of the situation had

changed, and that with proper handling the Davis candidacy could be made formidable.

Davis returned to Clarksburg early in the Spring for several days' stay. Encountering Shaver on the street, he protested against his activities.

"This is our affair," Shaver informed him. "You're not responsible for what your fool friends do."

When the Democratic National Convention met in New York in June, the "fool friends" were there in force.

CHAPTER XVI

MADISON SQUARE GARDEN

"ALABAMA?"

"Al-a-bam-ah-h-h-h-h— casts—twen-ty-four votes—for Os-car—double-yuh—Un-n-n-n-n-der-wood!"

"Arkansas?"

"Ar-kan-saw—casts—"

For one hundred and three ballots, breaking all records, the Democratic National Convention of 1924 worked its way through the jungles of factional strife to the clear uplands of party accord. It sang, swore and sweltered; prayed, profaned and perspired; fumed, fraternized and fought; and eventually agreed. Blazing skylights, long night sessions, miles of marble corridors and concrete pavement—and then the end! Of all who watched and waited, sleepless under the strain, none greeted the final outcome with greater relief than a little band who from the first had worked for one thing only—the nomination of John W. Davis of West Virginia for President of the United States.

Clem L. Shaver climbed uncertainly over the front of a box from which the fight had been directed. Weakly he pushed his way through the throng to the seats oc-

cupied by the West Virginia delegates. There his knees sagged as he asked: "Is it true, or is it all a dream?"

At the home of Frank L. Polk, where another group kept vigil, Dorsey W. Potter of Clarksburg shouted down the stairway: "He's got it!" Mrs. Davis, listening with Mrs. Polk at the radio, took up the cry: "You've won! You're nominated!" William Britton, the chauffeur, thrust forth a horny hand. John W. Davis smiled: "Well—it's over!" Within ten minutes the house was swarming with politicians of high and low degree. Reporters came, and camera men, sob sisters and special writers—interested and insistent. But that was the close of the chapter.

II

Shaver and the "fool friends" were on the ground early. The West Virginia Warwick reached New York a full two weeks before the convention. When the others arrived the stage was set. At the entrance to a reception room on the main corridor of the Waldorf a modest sign appeared: "Davis-for-President Home Town Club." West Virginia flags were draped about the walls. Framed portraits of John W. Davis were placed to attract attention. The "fool friends" went to work.

It was a case of waiting. Although Davis talk was plentiful there were ominous rumblings. But when the deadlock came the Davis lines held fast. When attacks came they were met. Day after day Shaver and

Polk sat in a box opposite the speaker's platform, conferring, receiving reports, giving orders—and waiting. On July ninth, after ten days of balloting, the big break came. State after state crashed in—West, North and South.

"And many that are first shall be last." But they came too. — "Al-a-bam-ah-h-h-h-h — desires — to — change — her — vote. Twen-ty-four — for — John — double-yuh—Davis."

III

August ninth, 1924, found Clarksburg cleanly washed and expectant. A neighbor was coming home. At the station the crowds were waiting. Old men, young men, many women, a few children. Down the steps to the platform and into the arms of friends came the boy who had traded a heifer to Dorsey Cork for a pony; who had taught Bill Coon to throw a curve; the young professor of law; the lawyer, legislator, diplomat, now a nominee for President.

Old Colonel Johnson, who had tossed away his own chance to go to the Legislature that his running mate might win, contentedly climbed in beside him, long white whiskers and all. Through lanes of trees and flags the procession started to Lee Street. There it came to a halt. On familiar ground as the sun streamed through the trees, the returning neighbor said: "My heart goes out from me, and I must wait to speak until it comes back again."

Then down the center hall they all trooped past—

"How are you, John?—Hello, Jim! All these yours? —Glad to see you, Ida—Always knew you were the smartest man in the world, John!—Good of you to come so far—How's Mike?—Very well, thank you." They passed in an endless stream and swarmed about the place. They drank Miss Emma's grapejuice and talked about old times. They laughed. A few of them cried. The Lee Street house received a traveler home.

PART II

THE OPINIONS AND SPEECHES OF JOHN W. DAVIS

Compiled by the Editor

I

Shall not we, too, answer like men who are freemen and propose freemen to remain?

I

A WAR DOCUMENT

This was one of the first of Mr. Davis' public speeches to attract wide attention. October 27, 1917, was the last day for subscriptions to the Second Liberty Loan in the District of Columbia. Several of the Departments in Washington had declared a half holiday. Large bodies of employees of the Government, led by bands, marched in parades from their respective offices to "The Ellipse," where approximately 100,000 people were gathered.

On the grandstand were many distinguished guests, including the Secretary of the Treasury, Mr. William G. McAdoo; the Secretary of War, Mr. Newton D. Baker; the Secretary of the Navy, Mr. Josephus Daniels, and the Secretary of Agriculture, Mr. David F. Houston. Secretary McAdoo made a stirring appeal.

A contemporary chronicler reports that "In a deliberate manner, with a clear and steady voice which carried even to those on the outskirts of the multitude, the Solicitor General spoke as follows:"*

If this meeting were called for the purpose of inducing subscriptions to the Liberty Loan, it would in my judgment be unnecessary; for, all questions of patriotic duty aside, I cannot believe that anyone within the sound of my voice has not already possessed himself according to the limit of his means of the best and safest interest-bearing securities in the world—endorsed by one hundred millions of people and secured by a first mortgage upon half a continent.

It would seem also that if this meeting is held to celebrate the success of the loan it is premature. Not because there is the slightest doubt that this loan will

* Mr. Blackburn Esterline.

be subscribed and over-subscribed. The American people have made up their minds about that. You may rest assured, Mr. Secretary, that neither this loan nor any of those which will surely follow it runs any risk of failure. But no good general halts his troops to celebrate a victory, no matter how fully assured, until the sun has gone down on the final day of battle.

But there is a service to be performed by this gathering which is neither unnecessary nor premature. The true reason for this vast assemblage is that we may send out from this place a message to our fellow citizens and allies; and a message to our enemy as well. This is a city set upon a hill, whose light cannot be hid. The people of the United States have a right to ask as they put their armor on whether the pulse of the Nation's Capital beats in unison with their own. Let us make them know that, prompt as they are to answer the call of our great President, we are no less ready; that, firm as they are in their devotion to our cause, we are no less steadfast; and, willing as they are to make sacrifice of their all for justice and for liberty, they shall not outrun us in self-surrender. And to the Kaiser and his minions let the word be sent that when we authorized our Commander-in-Chief to use against them and their insolent agression all the resources of this Nation we meant in solemn and in deadly earnest exactly what we said.

When on the first of February last the Imperial German Government declared its intention to enter upon a campaign of unrestricted murder, to deny to American citizens the right to travel in security upon

the open seas—the immemorial highway of the nations—and to make indiscriminate war upon all mankind, it turned to us and asked the sneering question: "What are you going to do about it?"

To fully catch the weight and import of that insulting challenge we should remember that we were not the first to whom it had been addressed. It had been flung at tiny Serbia; and that nation of patriots replied by hurling from her soil in ruin and confusion an invading army larger than her own. And when at last, attacked in front and rear, overwhelming numbers drove her soldiers through the icy rigors of the Albanian mountains, they went not in surrender but only that they might rest and refit themselves and return to the attack once more.

Belgium faced it when in reply to the demand for the surrender of her honor she retorted that "Belgium is a country, not a road"; and she made her answer good with the thunder of her guns at Liege, albeit at the cost of her own martyrdom.

It was the same challenge which was addressed to Russia; and upon hearing it the Great Bear stirred himself and took toll of more than a million and a half of German and Austrian prisoners.

It came to Italy in the form of a demand upon her as a member of the Triple Alliance that she join the Central Empires in their war. But it was the Italy of Victor Emmanuel and Garibaldi, of Mazzini and Cavour, of Magenta and Solferino, which responded: "I became your ally for defense and not for aggres-

sion, and in your plans for criminal plunder and rapine I will have no lot or part." And the men who today are performing prodigies of valor upon the Roof of the World, among the Alpine snows and glaciers, are the lineal descendants in blood and spirit of the legions who under Cæsar turned back the German hordes and saved the Europe of an earlier day.

German soldiers, drunk with the thought of easy triumph, shouted this challenge as they rushed on Paris. And all the spirit of immortal France breathed itself out in the order of her great Field Marshal that ushered in the day of the Marne. Can it ever be forgotten? "Soldiers of France," said he, "the moment has arrived! On tomorrow you will advance against the enemy. When you can no longer advance you will hold the ground which you have gained. When you can no longer hold the ground which you have gained you will die upon the spot!"

And when, lost to all sense of honor or of shame, Germany said to that nation which shares not only our language, but our traditions and ideals of liberty as well: "I shall no longer keep the ancient and solemn covenant between us made for Belgium's neutrality; what will you do about it?"—to her lasting glory great England answered: "You may break your pledges as you will; I shall keep mine." And into the scales of justice she flung all the weight of Britain's battleships, five millions of armed men, and guns that "touch limbers from the Somme to the sea."

Because our wrongs, no less intolerable, come later

in time than theirs, shall we be less ready to resent them? *Shall not we, too, answer like men who are freemen and propose freemen to remain?* Shall we not with all our will and all our power make defense to the end against this brutal and bloody assault upon all that we hold most dear?

Ah, when Germany comes to stand at the bar of history, as stand she surely must, to answer for her crimes against mankind, what a cloud of witnesses will confront her in that reckoning. Belgium will tell of her ruined homes and looted cities, her outraged women and her mutilated children. Poland will point to the bones of the starved that whiten all her highways. Serbia from her ashes will cry out in accusation; and the very sea itself will cast up its dead that they may speak in her condemnation. Ours be the task to join with the other free peoples of the world in leading her by force of arms to that solemn judgment bar.

Nor can we forget, my friends, that in this day we, too, are being weighed in the balances of God. I take a hint from you, Mr. Secretary, and recall the words which President Lincoln addressed to Congress in the fateful year 1862, and which might well have been written of this time. Said he:

"Fellow-citizens, we cannot escape history. We of this Congress and this administration will be remembered in spite of ourselves. No personal significance or insignificance will save the one or the other of us. The fiery trial through which we pass will light us down in honor or dishonor to the latest generation.

We shall nobly save or meanly lose the last, best hope on earth."

Shall not we of this later date, with that solemn admonition sounding in our ears, resolve without shrinking to lay all that we have; aye, all that we are, on the altar of human liberty and freedom!

II

Let us take from its red a joyful courage for all our sacrifices; from its white, new assurance of the purity of our purpose; and from its blue, fresh constancy for our devotion.

II

THE FLAG

Address delivered at Washington, D. C., on Flag Day, June 14, 1918, when Mr. Davis was Solicitor-General of the United States. It will be noted that this was during the last year of the Great War.

Fellow-citizens:

We have come on this anniversary, as others before us have done, to pay homage to the flag of our country, unfurled one hundred and forty-one years ago. We honor it, not as a mere image or fetish, but as the sign and symbol of things infinitely great and infinitely dear.

To those who gazed upon it in its natal hour it meant, as it still means, Independence: the right of Americans to ordain and establish a government of their own devising, framed in their own fashion, and dedicated to ends of their own choosing; and the right of that Government so ordained and established to stand an equal sovereign among the nations of the earth, seeking no selfish purpose but yielding nothing of its honor or its dignity, keeping faith and compelling it with all men, oppressing none, but refusing in its turn to be oppressed by any.

It symbolized then, as it symbolizes now, Liberty: that liberty which followed upon independence, assur-

ing to every man the right to pursue his own happiness in such lawful way as he might please and to enjoy in peace the fruits of his honest toil; a liberty guaranteed and made secure by a Government of the people, for the people, and by the people, drawing all its just powers from the consent of the governed and from that consent alone.

In ever-increasing measure it has typified Union: an indivisible union of indestructible States; from many, one; each the guardian of its own fireside and hearthstone, yet all bound by mutual obligation in an indissoluable covenant; a union also of hearts fired by like ideals, inspired by common purposes, and bound in a common fate.

To millions of men it has been a promise of refuge. Hither have come from all the globe the "huddlers from the storm" to find both warmth and shelter; the oppressed, the persecuted, the downtrodden of humanity have found beneath its folds relief from their oppressors, escape from those who persecuted them, and surcease from the burdens that had weighted them down. To no worthy man or woman who has sought asylum and protection here have these blessings been denied.

To all comers, whether old or new, it has offered opportunity; not such opportunity as kings and despots extend to their petted favorites, but the nobler opportunity of an unimpeded pathway and an equal chance in life; such opportunity as makes the penniless immigrant of today the merchant prince of tomorrow, as plants the cabin boy on the bridge of the flagship of

the fleet, as gives to the private soldier the stars of a general, and taking the illiterate boy of the frontier from his railsplitting, makes him a master of the English tongue and President of the United States.

At home and abroad this standard has been accepted as the symbol of abundance: the emblem of a nation happy in the possession of one of the fairest and most fertile portions of the surface of the earth, a domain yielding with inexhaustible bounty all things needed for the health and comfort of man, and of a people upon whom a kindly Providence has showered more national and personal wealth than upon any other in the long history of the world.

All these things our flag has meant in the past; all these, and still more, it means to us today; for now the time has come when we are challenged to vindicate and defend our inheritance. Instead of independence we are invited to accept the orders issued by a foreign sovereign; for our liberty we are asked to substitute the rule of a military despotism; as a reward for our gift of free asylum our unity is to be destroyed by seeds of discord and disloyalty, sown by German hands. Our opportunities are to be circumscribed by the envious greed of those who begrudge to all others a place in the sun; while out of our very abundance imperial Germany seeks to recoup the frightful cost of her mad adventure. Is it for uses such as these that all these gifts have been bestowed upon us?

At such a time the flag takes on new promise, as it floats over thousands of American soldiers in France

and Italy and flies on the embattled ocean from the masthead of hundreds of American ships. To the hard-pressed soldiers of England and France and Belgium and Portugal, on the long line from the sea to Switzerland; to the brave defenders of Italy, on the long line from Switzerland to the sea, it brings assurance of aid and re-enforcement. To our co-belligerents it gives pledge of all our resources, to be freely spent in the common cause, and to lovers of freedom everywhere it shines as a beacon of hope and a warrant of ultimate victory.

There is something more. To us who stand here this ceremony, if it is to be other than mere form, must be a moment of rededication. The message of the flag to us is a call to duty and a summons to sacrifice. Thousands of our best and bravest are answering this call in their own persons day by day. One who sees them go from the home to the camp, from the camp to the vessel, the vessel to the port, and the port to the firing line must be poor in spirit indeed if he does not ask himself what sacrifice he can make in recompense for theirs. Labor will not be adequate, for no toil of ours can equal the long vigil of the seas nor the weariness of the trenches; money will be no equivalent, for they have left behind them all they had and gone forth empty handed; care will not cancel the debt, for they will have anxieties of which we little dream; our fidelity to duty can be but a pale reflection of theirs, for they will be faithful unto death. All we have to give of labor, of means, of care, and of fidelity will be little

enough if we are to be worthy to take their hands when they come home again.

Yet is there one among us so faint of heart as to question the worth of all this sacrifice? If so, let him reflect upon the stupendous issues that hang upon the hour. Let him ask himself whether it is worth while that citizens of America, free and independent, shall pass upon their lawful errands, secure from murder or assassination, by land and sea alike? Is it worth while that the open seas which brought our fathers here shall be open for their children to go and come again? Is it worth while that cities shall not be sacked, women shall not be outraged, children shall not be maimed, countries shall not be laid waste, and peoples shall not be deported and enslaved without redress against those who do these things? Is it worth while that war shall not remain the constant occupation of all mankind? Is it worth while that our children after us shall still enjoy in law-abiding peace the independence and the liberty our fathers won?

"Who stands if freedom fall?
Who dies if freedom live?"

It was a Revolutionary patriot who wrote:

"These are the times that try men's souls. The summer soldier and the sunshine patriot will in this crisis shrink from the service of his country, but he that stands it now, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict the more glorious the triumph.

What we obtain too cheap, we esteem too lightly. 'Tis dearness only that gives everything its value. Heaven knows how to put a proper price upon its goods; and it would be strange indeed if so celestial an article as freedom should not be highly rated."

In the name of our God have we set up our banner. Let us take from its red a joyful courage for all our sacrifices; from its white, new assurance of the purity of our purpose; and from its blue, fresh constancy for our devotion. As we lift it to our lips and hearts let us swear again in the presence of Him who rules the destiny of men and nations that in our hands it shall suffer no dishonor, and while life in us remains it shall bow to no defeat.

May God keep us steadfast in the same.

III

In the language of Burke, "it is with an armed doctrine we are at war."

III

WAR-TIME LEGISLATION

Excerpts from speech delivered before the State Bar Association, Danville, Kentucky, July 2, 1918.

THE task which falls upon one honored by an invitation to address you in this present year (shall I call it a year of grace?) is lightened by the fact that he carries no burden in the selection of a subject upon which to speak. The times suggest, if they do not compel, the choice of theme. When the clouds are filled with lightning and the air with thunder, it is the storm alone which can engage our thought; when the flood is rushing down upon us we are concerned with nothing but the course of the torrent; when the foundations of human society are shaken, and the very edifice of civilization is threatened, details of architecture lose their interest. The topic inevitably is the war, though each must interpret it in the language to which he is accustomed, just as each can see only that fragment of the stupendous whole within range of his personal vision.

The soldier naturally will think of it as a military problem, to be expounded in terms of offensives and defensives; of strategy and tactics. The diplomat will deal with it as a clash of political interests and a death-

grapple between rival governments. To the lawyer, however, the contest, both in outward form and hidden meaning, is primarily a battle for law—for that right to law, gained as the fruit of so many centuries of sacrifice, which the race must maintain or inevitably perish. For as it is only by the light of expanding law that man has made his ascent from the brute and from savagery to civilization, so it is only in a social order, based on law, that he can hope to hold the advances he has made. This truth the Teuton rudely challenges. He has placed above the individual a being called the State, without morals, without conscience, without inward restraint or outward obligation, which owes its origin to force, and depends upon force alone for its continued life, and which acknowledges no law but the will of its imperious agents. Over the minds and bodies of its subjects it exerts dominion by propaganda and compulsion; over the rest of the world it seeks dominion by arms, by intrigue, and by deceit.

The world has been oppressed and horrified by the loss and suffering which has attended upon the present great disaster. It has turned in loathing from the brutality and bestiality of German soldiery and has burned with indignation at the accumulated story of their cruelty and wantoness. But the assault which Germany has made upon the order, upon the law, the morals, and the ideals of mankind is a crime of deeper dye than any isolated outrage. That which has united twenty nations in a common resistance is the assertion

by the German Government that law does not govern the world; that

> Force rules the world still,
> Has ruled it, shall rule it;
> Meekness is weakness,
> Strength is triumphant,
> Over the whole earth
> Still is it Thor's-day!

In the language of Burke, "It is with an *armed doctrine* we are at war". . .

I need not argue to this audience that in this turmoil of action and achievement the lawyer has fully played his part. To him, as to others, has come the call to arms, and he has gone freely and willingly, notwithstanding the fact, as stated by the Attorney General of Great Britain upon his recent visit to this country, that—

"When a lawyer enlists he leaves everything. His is a single-handed business; in other words, no member of the bar has any practice which lasts for one moment after he, as an individual, disappears from the scene of his efforts. If a member of the bar goes, as thousands have gone, his business disappears from the very day he takes up his hat, on the day he leaves his chambers, and nobody can keep it alive for him. Of all the young lawyers who have gone to war there is not one who left anything behind, except the hope that his colleagues would treasure his memory and his countrymen would attempt to make good, as far as in their power, the sacrifices he had made in behalf of the common cause. If you take all the businesses of the world, and all the professions, you will not find any

profession that has made more gladly such bitter sacrifices for this war than the profession to which you and I belong."

Much of the labor involved in the administration of the draft law has fallen upon the lawyer, and he has borne his share of those other activities and duties within reach of the homekeeping civilian. But undeniably there exists among those members of the bar to whom military service is impossible a widespread desire to turn their purely professional talents to public use, and there is no department at Washington whose files are not crowded with sincere and patriotic tenders of such service.

It is to those of this temper that I wish to suggest a study of the legal weapons which have been forged for the country at this time and the additions to them which the future may demand; for, after all, the duty of the lawyer, whether in peace or war, is not merely to know the law as it is, with its bearing upon the rights of his client, but whether in the courtroom, the Legislature or the forum of public opinion, to assist in framing the law as it ought to be; always remembering, however, that those rules of conduct which may evolve in time of peace from leisurely debate or by the slow process of judicial accretion must emerge in haste under the stress of war full-armed in statutory vigor.

In no way are the changed conditions of the times more emphasized than by the long list of Federal statutes whose passage has been witnessed within the year. Even before we assumed the attitude of a belligerent it had become clear that laws which had been adequate

under normal circumstances must be supplemented and enlarged to meet unforeseen situations, and with the coming of war itself increasing drafts upon the reservoir of governmental power became necessary. I put to one side those acts having especially to do with the training of the army and navy and their kindred branches, the great appropriation and revenue bills and the series of measures by which the Government's finances have been so successfully conducted, and instance only such statutes as the "Espionage Act," so-called, although it deals also with many other subjects, and its amendments; the "Food and Fuel Control Act"; the "Trading with the Enemy Act"; the "War Risk Insurance Act"; the "Soldiers' and Sailors' Civil Relief Act"; the "Railroad Control and Operation Act"; the act establishing the "War Finance Corporation and the Capital Issues Committee"; the "Sabotage Act"; the "Government Housing Bill"; the "Overman Act," authorizing the President to rearrange and redistribute the executive functions of the Government, and the act "Regulating the Entry and Departure of Persons from the Country."

Nor should the list be closed without mentioning the "Selective Draft Act" of May 18, 1917, which stands in the front rank, and whose author, Maj. Gen. Crowder, is not only a skilled soldier, but an accomplished lawyer as well. It may be said for this statute that it has not only given us an army such as could have been assembled by no other method, but it has done even more. By its equal distribution of the common burden it has unified the country, wiped out discord

and disloyalty and roused the courage and earnestness of the people as nothing else could have done. One of the most distinguished Englishmen who has visited us since the war began, recently expressed his deliberate opinion that this act, in the promptitude with which it was adopted, the readiness with which it was accepted and the efficiency with which it has been administered, was the greatest single achievement of the entire war. I do not believe this to be the language either of compliment or exaggeration.

This is neither the time nor the place to attempt a serious survey of the contents of these statutes; nor is it my desire to weary you with any detailed discussion of their merits.

Some of them are designed to occupy a permanent place upon the statute books; others, either by their essential character or express terms, are limited to the duration of the war; and still others embody policies experimental in character, but whose success or failure will inevitably leave a lasting impress upon the future destiny of the country. Certain characteristics which they present are obvious to even the most casual observer. They exhibit the Federal Government invading new fields of activity; they make large additions to the functions and powers of the Executive, and they impose material limitations upon the traditional freedom of action of the individual citizen.

Among the unaccustomed characters which the Federal Government has assumed are those of merchant under the Food and Fuel Act; of landlord under the Housing Bill; of money lender through the War Fi-

The Davis home in Clarksburg, the main body of which was built in the seventies, during the congressional service of the late John J. Davis, father of John W. Davis

nance Corporation, and through the agency of the Director General of Railroads and the Shipping Board, that of common carrier, both by land and sea. Through the Alien Property Custodian the Government is conducting what is in effect a gigantic trust company of unlimited corporate powers; and by means of its Bureau of War Risk Insurance it has now become the largest underwriter of life insurance in the world.

It is a truism that in time of war the power of the Executive inevitably undergoes an enormous expansion. He is not only the Commander-in-Chief of the army and navy, but he is also charged with the execution of all those statutes which Congress in its discretion deems necessary for the common defense. The early Act of July 6, 1798, now Section 4067 of the Revised Statutes, vested in him in his civilian capacity unlimited power over the conduct, the whereabouts and the liberties of resident alien enemies in time of war, but the statutes we are discussing give him in certain respects powers hardly less absolute over the person and property of the citizen and the civil establishment. They authorize him to readjust the civil machinery of the Government, to requisition and confiscate property, to regulate and prohibit commerce, and to control in many ways the conduct of the individual.

Thus, for example, he may take possession of any factory or establishment engaged in the manufacture of ships or other war material and operate the same; may place compulsory orders for arms, ammunition or naval supplies and seize and take over any recalcitrant plant refusing to manufacture the kind, quantity or

quality desired; may take over to the Government use any ships constructed or in process of construction; may extinguish or requisition existing contracts for the building, purchase or construction of war materials; may requisition foods, feeds, fuels and other supplies necessary to the support of the army or the maintenance of the navy, or any other public use connected with the common defense, as also any factory, packing house, oil pipe line, mine or other plant in which any necessaries are or may be produced, prepared or mined. He may require producers of coal or coke to sell their entire product to the United States; he may, under various statutes, take land necessary for camps, cantonments, aviation stations, ship-yards, proving grounds, nitrate plants, and the housing of Government employes; and may commandeer distilled spirits, in bond or in stock, as well as fix the alcoholic content of malt liquors.

In the regulation of commerce, both foreign and domestic, powers equally broad have been conferred.

But it can not be that our Government under this great charter is lacking in any faculty necessary to the full discharge of the primal duty of self-preservation. Those who assembled to ordain and establish a Constitution in order "to provide for the common defense" and "to secure the blessings of liberty" to themselves and their posterity had learned from bitter experience the folly of divided counsel and scattered resources. They were ringed about by recent enemies, and had but lately been the unhappy witnesses of internal treason. It was no part of their plan to leave the nascent Gov-

ernment impotent against either foe. The express grants of power which the Constitution contains and those necessarily to be implied from them were believed by the founders, not with faint or doubting reason, to be adequate for the perpetual maintenance both of the nation itself and the independence and freedom of its citizens.

Insofar as this legislation has been challenged to comparison with the Constitution it has stood the test. In the cases arising under the selective draft law it was vainly insisted that the power to raise and support armies was not one which embraced conscription; that it was in no way aided by the more general grant of power to declare war; that the service which the law compelled was of the quality of involuntary servitude forbidden by the Thirteenth Amendment; and that its exemption of conscientious objectors who belonged to any well-recognized religious sect or organization was a violation of the First Amendment, in that it established a religion. While in a later case the still more curious contention was advanced that none but volunteers had ever entered or could enter any army which Congress might raise under the general clause, and that all others being in law militiamen could not be sent out of the country.

The First Amendment and its inhibition of any law which abridges the freedom of speech or of the press has been appealed to as against Section 3 of the Espionage Act. But those who so contend mistake the meaning of the liberty which it was the purpose of that amendment to preserve.

As was remarked by Lord Mansfield in Rex vs. St. Aspah, 3 T. R. 428: "The liberty of the press consists in printing without any previous license, subject to the consequences of the law." Or, as the Supreme Court puts it in Patterson vs. Colorado, 205 U. S. 454:

"The main purpose of such constitutional provisions is to 'prevent all such previous restraints upon publication as had been practiced by other Governments,' and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare. The preliminary freedom extends as well to the false as to the true; the subsequent punishment may extend as well to the true as to the false."

As recently as the tenth of June, 1918, that great tribunal, speaking through the Chief Justice, in the case of the Toledo Newspaper Company vs. the United States, restated the matter thus:

"The safeguarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests and that freedom, therefore, does not and can not be held to include the right virtually to destroy such institutions. It suffices to say that however complete is the right of the press to state public things and discuss them, that right, as every other right enjoyed in human society, is subject to the restraints which separate right from wrong-doing."

Freedom of speech, also, is a right to be exercised like all others in the pursuit of lawful and not unlawful ends. There is no protection extended by the Constitution to its licentious abuse.

The lawless who chafe under any exterior restraint and the timorous who flinch at any unusual exercise of governmental power find much in the existing circumstances which seems to them a paradox. It is paradoxical, say they, that in a war against militarism the citizen shall be compelled against his will to take up arms; it is illogical that in the effort to make the world safe for democracy, authority autocratic even in seeming shall for a moment be conferred upon the head of a democratic State; it is inconsistent that in a struggle, which is at bottom one for the freedom of the individual, men shall be forbidden to speak or write what belief or fancy may dictate, or to go where choice or interest leads them. "Madam," said a French officer to an American lady who asked him to feed her curiosity with tales of German atrocities, "Madam, the war is the atrocity." It is the war, with all its disturbance of human life and all its loosening of the bonds of normal thought and action, which constitutes the paradox. It is the emergency which is startling, rather than the manner in which it is being met.

What I have said will suffice, I trust, to show that while others in the community were contributing to the armed defense of the country the lawyer has not been entirely idle. But I shall speak to little purpose if I do not also suggest that, much as may have been done, still more remains to do. The greatest lawyer of the ancient world proudly wrote that "The house of the lawyer is without doubt the oracle of the whole State." The laws we are discussing remain not only to be administered, but also to be interpreted and expounded.

Defects will appear which demand amendment, and inadequacies which must be corrected and supplied.

Nor if the profession is to make adequate return for the confidence it has hitherto enjoyed and the high and honorable place it has been permitted to occupy in the public favor will this fill up the measure of our duty. We have some access to the public ear and constant opportunity which must not be neglected to keep before our countrymen the issues of the combat, and to cry and cry again, "Stand fast, ye free." If it be not now, yet there will come, soon or late, the day when peace will revisit this harassed planet. The work of the soldier will be ended with the victory of the cause for which he has been fighting, and the work of readjustment and restoration will be at hand. Then will enter again the lawyer to guard the temple of constitutional government and popular liberty and, showing how safe a shelter it has been through all the storm, to call men everywhere to worship in its gates.

Late in the afternoon of the 28th day of July, 1914, I was walking down one of the streets of the city of Tours, in France, when my attention was attracted by a vertical sun dial, curiously placed on the high wall of a building. It was constructed to mark the single hour of XII and bore the legend, "Quand je parle, l'heure est loin de moi"—or, liberally translated, "Even as I speak, the hour has fled." Further down the street I encountered a crowd of eager men and women, both soldiers and civilians, grouped around what proved to be a newspaper bulletin board. It carried the news that Austria had that day declared war upon Serbia.

And even as it spoke its message, as simple and direct as that of the dial itself, one hour in the history of mankind fled away and a new one was upon us. High noon had struct, and the shadows which had fallen forward on the pathway of many ardent lives were shortly to reverse their course. But the sun which that day was hastening to its setting was the sun of autocracy and despotism, and that which was to rise upon the morrow was the sun of freedom and democracy. God speed the day when under its unclouded rays not only we, but all mankind will enter upon a life of larger liberty and more enduring peace.

IV

I come to you with the title of American Ambassador but I am in truth only the last of many whom my country has lately sent. With the aid of your gallant sailors and seamen, she has despatched abroad within the last eighteen months two million others whose diplomacy is of the most practical kind. They came, I fondly believe, with all the zeal and spirit of true Crusaders and they left behind them many more equally ready for the great adventure. We are not ashamed of them.

IV

SPEECH AT "THE PILGRIMS'" LUNCHEON

Delivered at "The Pilgrims'" Luncheon, January 1919. This was Mr. Davis' maiden speech as American Ambassador to the Court of St. James. The importance of the occasion is obvious. The eyes of dignitaries were turned upon the person who was to fill the place of Page and Choate and Whitelaw Reid. Not only must the newcomer avoid remarks susceptible of misinterpretation, but he must remember John Hay's advice that "an ambassador is of no use to reporters unless he makes a blunder." Mr. Davis' habit of understatement—evident in this speech—made a favorable impression upon the British audience.

To a novice like myself in the field of diplomacy the American Government issues certain instructions among which I read a prohibition against the making of public addresses in the country of one's official residence "unless upon exceptional and festal occasions." I gather that the admonition has been honored somewhat more in the breach than in the observance, but to keep the record straight I ask you to take note that so far as I am concerned I regard this occasion as both exceptional and festal. Exceptional it surely is, for notwithstanding your kindly and familiar custom of extending a public welcome to the diplomatic representatives of the United States it is the first time I have enjoyed this privilege, and the hearty greeting you have given me has warmed my heart and made this gathering to me a feast indeed. Under such circumstances it would be hard even with less elastic instruc-

tions to forego an expression of my keen sense of the honor which you do me by this gathering.

Nor can I let slip this opportunity to voice for the people of the United States their deep appreciation of the splendid reception which Great Britain has just given to their Chief Magistrate. The gracious hospitality of Their Majesties, the King and Queen, the marked friendliness of your citizens, the manifold courtesies extended to the President and Mrs. Wilson on every hand, have gone home to the heart of America and have forged another and a lasting link in the chain which unites us.

The pleasure which I feel at this moment, however, is colored by a sense of deep regret, which I am quite sure you share, at the lamented passing of the courteous gentleman, the ardent patriot, and the true and loyal friend of both Great Britain and America who in such years of bitter trial preceded me in this office. You know perhaps more intimately even than do I what labors he sustained and with what unremitting and unselfish energy he gave himself to the tasks that the hours imposed. I cannot pretend at this time to do justice to his memory, but history will not fail to record his unsurpassed contribution to the cause of Anglo-American friendship and understanding, and to write the name of Walter Hines Page high on the role of those who have deserved well of their country and of mankind; nor will it omit to say that he as truly died for the flag he loved and the cause he followed as any of the soldiers who have fallen on the battlefield. May I be permitted to say for his successor only this

that to render service such as he rendered, and to earn and bear away so much of the respect and esteem of the people of these islands as did he, would be to fulfill his fondest hopes.

Mr. Page and many others, I am sure, have spoken to you with eloquence which have bound and which must always bind the English speaking nations in a community of speech which removes from us the curse of Babel and its confusion of tongues; upon our common literature by means of which we drink from the same eternal spring; upon our common history telling to generation after generation the story of trials endured and battles won by our ancestors; and above all upon the common ideals of justice and of liberty, refined by law and enjoyed in order, which through all the years have inspired our people. And in confirmation of the blessings which flow from all these things they have pointed again and again to the fact that on the Canadian frontier our countries meet in the longest common boundary in the world, so little marked and guarded that the traveller crosses it without perception until some chance flag or ensign warns him that territorial sovereignty has changed although speech and custom and manner of life has not. These are trite and familiar themes, if you choose; but they are trite and familiar only as all great things are. The axioms of science, the great principles of the moral law are trite and familiar also and yet they are the things by which men and nations live and move and have their being. Such things cannot be too often repeated; and had I the opportunity I would say to every American,

and would repeat to every Briton—"These are indeed your kinsmen; study them; understand them; learn to give and take with them, and guard their friendship as a sacred thing."

But after the history of these last red years how little need there seems for such a lesson. Has it not been burned into our hearts by the fires of war, and marked in Pentecostal blood on the lintels of our homes? I would not wish to weaken by any exaggeration of phrase the tribute of America and her people to the manner in which Great Britain and the Britons have borne themselves throughout this war, but it would not be easy to exaggerate, if one desired, their admiration for your courage, your steadfastness and your dogged endurance. From the fateful days of August, 1914, when you made your prompt decision, when in support of your pledged word to martyred Belgium you threw into the trembling scales all that you had and all that you might hope to be, their pulse has beat with sympathy and understanding, for they knew that you, God helping you, could do no other. They watched your heroic army throw itself across the Channel and fight its way through four long years all the way from Mons to the Marne and back to Mons again. They marvelled as its numbers grew in spite of the waste of constant fighting to some seven million men engaged at a single time upon more than seven fronts of battle. They heard your far-flung Dominions and Dependencies answer to your call from the house quarters of the globe, and saw "The swarthy sons of alien races and your foes of yesterday, rush to put

their living bodies between England and England's enemies." They witnessed your Navy sweep from the ocean the vaunted warships of Germany and felt that while the Allied fleets held the sea against her the outcome of the struggle could not be doubtful no matter how long the end might be delayed. They noted the fashion in which your men and women at home gave up not only all their ease but their most cherished liberties, and spared themselves no labor, however menial, and no privation however great, that might help in the glorious cause; and they bowed very low in reverence before the long and ever lengthening roll of those who,

> "In the glorious morning of their days
> For England's sake lost all but England's praise."

Without taking so much as a single leaf from the well-earned laurels that crown the victorious brows of heroic France, or Italy, or Belgium, or Servia, or others of the Allies, is it too much to paraphrase the words of the dying Pitt and say that England has saved herself by her exertions, and may well have saved the world by her example.

What that example meant for us when at last our hour had struck it would be difficult indeed to put in words. We, like yourselves, were a non-military nation and sudden conversion to a nation given over to war would have seemed well nigh impossible if your experience had not been before us. Our industries were devoted to the arts of peace. We had to learn from you how to turn our plough-shares into swords,

and into spears our pruning hooks. We were jealous as you have ever been of any interference by Government in the intimate affairs of daily life, and each American boasted with your poet that,

> "Save his own soul's light over-head,
> None leads him and none ever led."

But we had to learn from you to submit to Governmental control in the most intimate details, laying down for the time our liberty of action that we might some day take it up again. Indeed it was not necessary to look across the ocean for inspiration for Canada was working these miracles at our very doors.

I come to you with the title of American Ambassador but I am in truth only the last of many whom my country has lately sent. With the aid of your gallant sailors and seamen, she has despatched abroad within the last eighteen months two million others whose diplomacy is of the most practical kind. They came, I fondly believe, with all the zeal and spirit of true Crusaders and they left behind them many more equally ready for the great adventure. We are not ashamed of them; and we venture to hope that you have found them not unworthy companions of your fighting men. We wished nothing better for them when we sent them out than that they should do battle with an equal courage, tenacity and endurance. Some of them will not go home again; and if our losses seem, by reason of number, less grievous in the aggregate than your own, I ask you to remember that all one cannot keep and balance books in the matter of human lives. Those who

are gone have entered into eternal comradeship; and whatever else the war may leave behind it I dwell with hopeful pride on those reunions that the coming years will bring when British and American survivors of the Great War will sit down side by side to tell again the story of valorous deeds against a common foe.

And now comes victory, complete, overwhelming, satisfying, adequate; the military power of Germany abased, her dreams of world conquest dissipated, and the evil men who loosed this horror on the world driven one after another from their seats of power. The world rests on its arms and breathes again and turns, with no light estimate of the task, to the labor of peace and reconstruction. Of a certainty it will call for all we have of wisdom, of courage, of faith and of self-restraint.

It is a happy augury that already we have agreed in terms upon the broad outline that the settlement must take, and have proclaimed this agreement before all the world. Surely the wish is not merely father to the thought when I express my conviction that in matters of detail we will be in equal harmony. I am so convinced because I believe that the same great ideals and purposes animate both Great Britain and America, and because I am sure that there can be no rightful conflict between our fundamental interests in the final adjustment, for, as has been finely said:

"This we may know certainly; this we may hold to confidently; that which is right can harm no man; that which is wrong can profit no man; though all other

lights swing and circle this is the pole-star by which we may safely steer."

It is in this spirit that we mean to strive for justice, exact, complete and evenhanded to all men whether friend or foe; a justice which does not shrink from demanding that the spoiler shall return all that he has taken from its rightful owner and shall restore, so far as human hands can do it, the havoc which his crimes have caused; which will be equally scrupulous to see that no man or nation shall suffer wrong without redress or bear punishment without deserving; which will be turned aside from its proper ends by sentimentality on the one hand, or passion on the other, and which will fix its constant vision not on the past or the present alone but on the long future as well.

And with this justice, and by very reason of it, we plan for a broader freedom for ourselves and for all mankind; we ask to be free from the constant fear of war and from the chains and trammels which that fear imposes. We desire to rejoice once more at home in the ancient liberties which have come down to us through the centuries and to enjoy abroad security upon all our rightful errands, and believe that the statement that "Governments derive their just powers from the consent of the governed" is not an empty phrase but a living truth; we look with confidence for the day when all the nations of the earth shall know this as the truth which shall make them free.

But since eternal vigilance is the price both of justice and of liberty, we propose to set up due safeguards for their maintenance. The "armed doctrine"

of irresponsible power must give place in international, as it has in private, affairs to the rule of common right. Law must rise superior to brute force. The moral code must govern states as it governs men; and the nations of the world must pledge this each to each in mutual league and covenant.

Such is the harvest which the world must reap from the precious seed sown on the battle-fields of this war. These are the things which we must do if we would keep faith with all our sacred dead. It is the promise of these things which reddens now all the morning sky, and it is in the light of this new day that Great Britain and the United States are to walk, God willing, in unshaken trust and firm companionship.

V

In the name of this trinity of ideas—human equality, personal liberty and popular sovereignty—they baptized the new states at whose birth they were presiding and to the cause inspired by these ideals they pledged, without reserve, their lives, their fortunes and their sacred honor. There have not been wanting cynics who scoffed at the resounding language of the Declaration of Independence. . . . But the great men who wrote those sentences were plagued by no such illusions.

V

THE DAY WE CELEBRATE

Address at the dinner of The American Society in London, July 4th, 1919. Excerpts have been omitted.

. . . I CALL attention to the fact that this is the second time within five short weeks that we have celebrated on British soil an American holiday. The first, on the 30th of May, was Decoration Day—a day of solemn memorial. To-night, on the Fourth of July, we celebrate the day of national independence—a day of feast and rejoicing. Both at the Fast and at the Feast we have been privileged to welcome the attendance of our British brethren and to count ourselves honored by their presence. May I say just a word about the earlier observance? In the kindly bosom of this ancient Motherland there sleep to-night more than 2,500 sons of America who left her shores to join Great Britain in the fight for righteousness, and their bodies scattered throughout the United Kingdom make each its "corner of that foreign field" a joint and mutual trust. When the day arrived that by long custom has been set apart in America for honoring those who have fallen in her service, not one such grave in all this land was left unvisited and not one such sleeper was left unremembered. America, believe me, is profound-

ly grateful for this fraternal homage to her fallen sons, and those who loved them most find comfort in the thought that they rest among their friends.

I rise to propose the Toast, "The Day We Celebrate."

> What hath this day deserved,
> What hath it done,
> That it in golden letters should be set
> Among the high tides in the calendar?

Its claim to our attention begins with the gathering in the City of Philadelphia of a band of earnest, and perhaps not over-sanguine men. They were setting out upon an enterprise of the greatest hazard and yet they realized, as we of this generation once more have learned, that there are causes which transcend the fortunes of any individual and ideals in whose pursuit the bitterest sacrifices cease to be sacrificial. Through a "decent respect for the opinions of mankind" they made profession in a few terse phrases of the creed that animated them. "We hold," said they, "these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed." In the name of this trinity of ideas—human equality, personal liberty and popular sovereignty—they baptized the new states at whose birth they were presiding and to the cause inspired by these ideals they pledged, without reserve, their lives, their fortunes and their sacred honor.

There have not been wanting cynics who scoffed at the resounding language of the Declaration of Independence. They have professed to find in the assertion of human equality a bold denial of the laws of Nature and heredity and a wilful blindness to the large part environment must play in every human life. Demagogues have arisen to invoke the sacred name of liberty as a cloak for their own license, and others have accordingly distrusted the real liberty in whose name license profanely masquerades. Dissenting minorities have sheltered behind the Declaration in protesting their individual assent. But the great men who wrote those sentences were plagued by no such illusions. The equality they proclaimed was no fictitious equality of faculties or native endowment; but that equality of right and opportunity to which the rich and poor, the high and low, the proud and the humble are alike entitled before the law. The liberty they professed was no irresponsible license but that liberty under law whose bounds are reached where the rights of any other man begin; and the consent of the governed upon which just power must rest is consent voiced by the only organ competent to declare it—the freely expressed will of a fair majority. They were no more inclined to the vagaries of the communist or the class warfare of the Bolshevist on the one hand than to the fetish of irresponsible power and the *jus divinum regum* on the other.

Years have come and gone since that day. Those who would seek the monument of the signers of the Declaration must find it in the great and prosperous

nation that has reared itself on the foundations which they laid. Thirteen scattered colonies have become forty-eight united States. Three millions of people have increased to one hundred million. The simple life of the planter and the pioneer has given way to all the complexities of modern society. Wars have been fought at home and abroad, but throughout all the changing years the language of the Declaration of Independence has been to the American people their pillar of cloud by day and of fire by night. There may have been wanderings by the way, for the road has not been always easy or the pathway clear. It is not a simple thing to keep profession and performance in equal balance. But no one can understand the past history of America and no one can foretell her future action who does not realize that these cardinal Articles are bedded in her very soul.

The test of belief is action. We have just emerged, thank God, from the greatest war effort that America has ever been called upon to make. It has been a united effort. For the first time in all her history there was, from beginning to end, no Peace Party in the United States and no section of opinion that would have been content with a victory less sweeping than that which the Allied arms have won. There was horror in America at the brutal and inhuman warfare that Germany was waging; there was deep and bitter resentment at her invasion of national and individual rights; but there was fiery resistance to the challenge which she flung in the face of human freedom. It was her good fortune to be led in the hour of fate by a great man

who could make this issue transcendently clear to all his countrymen and could show to them that there were still those who dreamed of "universal empire growing up from universal ruin." When this lesson had gone home there was no discordant note in the response.

How indeed could it have been otherwise? How could there have been less unity or earnestness with the glowing example before us of Belgium and France, of Serbia and Italy, of Canada on the north pouring forth her life-blood in a steady stream, and the Antipodes sending across the sea the flower of their sons, of Great Britain and her free Dominions fighting the great fight for liberty and righteousness? Those who speak of British vessels carrying American troops across the sea tell but half the story. They were drawn here by the irresistible magnet of British and Allied heroism.

And now, as Lord Reading has said, the end of that has come. The treaty has been signed. Notwithstanding the proverb history does not repeat itself. Yet it is a significant coincidence that the two most important treaties to which the signature of the United States has ever been appended have been negotiated and signed in the city of Versailles. The first, in 1783, put the seal of achievement upon the work of July 4, 1778, and established the independence of the United States. It was generous in its terms beyond precedent and came like a benediction from the old land to the new. It made it possible for Great Britain and America to renew in friendly association the path which

destiny had marked for them. And now for the second time the Treaty of Versailles has put an end to war and called us back to the tasks of peace. The world can never pay the debt it owes to the brave men, dead and living, whose sacrifice and valor have made victory possible. The day will come, indeed it is already here, when the proudest boast of any man will be, "I was out with the Allies in the Great War." But those upon whose shoulders fell at Paris the crushing burden of all of Europe's age-long problems, who were charged with the duty of bringing order out of a world that had fallen into chaos, of restoring justice to its sovereign place among men, these, too, have greatly served their countrymen and mankind.

How tremendous is the scope of this treaty! Alsace and Lorraine renew their bonds with France; the Danes of Schleswig turn their faces home again; Poland rises from the ashes of her past and Bohemia is free once more. Prussian militarism disappears, paying the penalty of its crimes and in its place there rises a League of Nations to teach the world a saner and a wiser and a better way of life.

When one hears of the criticism which has been directed at the Peace Conference one cannot but remember Benjamin Franklin's statement that the Scriptures, in promising rewards to the Peace-makers, certainly referred to the next world, for they were more commonly cursed in this. History furnishes many instances to justify this opinion. But no man should presume to criticize who does not know what difficulties have been encountered. Those who complain of the

time that has been spent should remember that Congress which brought forth the Peace of Westphalia lasted for more than five years before a treaty was evolved, and spent the whole if its first three months in squabbles over diplomatic precedence; that the Peace of Utrecht was fourteen months in making and that of Aix-la-Chapelle two years and nine months; while even the Treaty of Ghent which closed our little argument of 1812 was four months in framing and achieved the rare distinction of containing not a single provision in regard to the issues which had brought Great Britain and America into war. Yet here at Paris in 1919 were disputants and here were issues beside which, both in weight and number, those of earlier gatherings seem insignificant. As for those who still protest against the Covenant for the League of Nations they seem to me to divide into two classes. In the first, are those who expect the unattainable; with them it is useless to argue. The second, who are at the other extreme, remind one of the story told of Dr. Johnson when a fond mother insisted on exhibiting to him the musical genius of her budding offspring. After the child had completed her performance the proud parent waited in vain for some expression of approval from the great man's lips. When the silence had become embarrassing she turned to him and said, "Well, Doctor, it was very difficult." He answered, "I wish to Heaven, Madam, it had been impossible." I am constrained to believe that many critics of the League of Nations would say the same

thing if they were only as candid as they are vociferous.

We come out of the war's shadow into the sunlight of peace, chastened by suffering but strengthened by experience, enlightened by the knowledge of ourselves, and richer in the comradeship of our friends and fellow compatants. We shall not forget that if peace has its victories no less than war it has as well its sacrifices. To win the war we were ready to surrender everything save honor. Perhaps we shall have permanent peace on no lighter terms; but the ideals which carried us into the conflict and the energy which bore its strain will not be lacking. Nor will that unity desert us which was forged in the hot heat of battle and tried and tested to the utmost in the long days of the Peace Conference; but England, and France and America, standing shoulder to shoulder with other nations of like mind, will make firm and stable the peace of the world.

I began, Mr. Chairman, by expressing the gratitude of America for British participation in one of our holidays. I can close with no other note. All over this imperial city today, on the towers of the Houses of Parliament, over Westminster Abbey where lies the consecrated dust of many as dear to America as to Britain, the Stars and Stripes and the Union Jack float side by side. It is a sight to stir the dullest imagination and wake the slowest pulse. As you look upon these banners you realize that as the patterns differ, but the colors—the red, and the white and the blue which dye them—are the same, so the Governments they symbolize differ in outward form and detail but

administer the same great principles of human equality, personal liberty and popular sovereignty. And there where the passing breeze has laid their folds together—the stripes of the one athwart the crosses of the other—they form in their combined design an impenetrable barrier to all foes of human freedom. And this is no transient vision. It is, I humbly believe, the will of God to the nations.

I ask you, Mr. Chairman, My Lords and Gentlemen, to drink with me, "The Day We Celebrate."

VI

An unfriendly critic might denounce it as complicated and cumbersome, ill adapted to the complex demands of international intercourse, slow in action and uncertain in outcome. . . . (But) the American people are like for many years to accomplish through this means their compacts with mankind.

VI

THE TREATY-MAKING POWER IN THE UNITED STATES

Ambassador Davis delivered this address at Oxford University on February 20, 1920, while the Senate fight against the League of Nations treaty was fresh in the memory.

It is not easy for a diplomatic officer, in search of a subject upon which to address a serious-minded body like the Oxford University British-American Club, to select a topic at the same time sufficiently concrete to be of interest and sufficiently abstract to be within permitted limits. He must forgo, of course, any discussion of matters in train between his Government and the ones to which he is accredited; he must be dumb upon all political questions agitating his own countrymen; while as to those which disturb the serenity of his hosts he must, for his life, be not only dumb but to outward appearance deaf as well. Such restrictions, you will realize, are rather a severe abridgement of the Constitutional right of free speech. They leave their unfortunate subject little secure footing outside the realm of paleontology or the higher mathematics.

I believe, however, that I shall not trangress if I ask you to consider the history and scope of the treaty-making power of the United States, or rather, from the

point of view I have in mind, their treaty-making machinery. It is not impossible that some of its manifestations have come to your attention within the last twelve months; and from time to time there has been reason to fear that not all who witnessed its revolutions, or heard the clanking of its parts, have understood the mechanical principles by which it was controlled. Doubtless none of this audience fall within this category; but since you exist not only to secure but to disseminate information between our countries, I offer no apology for inviting your attention to the particular function of government with which all nations are reciprocally concerned.

There is a peculiar reason for such studies on the part of Britons and Americans. As no two nations are so much alike, so none are exposed to greater danger from a failure to recognize their differences. It is an observation worth some reflection that in all probability neither the War of the Revolution nor the War of 1812 would have occurred if the Americans and English of those days had been less rather than more alike. From the American point of view the Revolution was begun as Englishmen, and continued in defence of rights to which the colonists in common with other Englishmen were entitled by right of English blood. The searches and seizures that brought on the War of 1812 could never have resulted in the taking of some 2,500 or 3,000 American seamen by British cruisers from the decks of American vessels had it been possible to distinguish them either by speech or by appearance or by habit from those of British allegi-

P. & A. Photo

John W. Davis' Residence at Locust Valley, Long Island, N. Y.

ance. You said they were British, and if not they ought to be. We said they were Americans and that ought to settle it. So we went to war, spilt each other's blood, and wound up without deciding which was in the right, being careful in the Treaty of Peace to avoid all reference to so delicate a subject. The many similarities between the two peoples ought to make, and quite surely do make, for their continued friendship; but we must be careful not to put upon these ties a strain stronger than they will bear, and we shall know their strength better if we test them link by link.

It is with such thoughts in mind that I approach the subject I have chosen. As I proceed you will find the American system in many respects not unlike that of Great Britain, but you will also detect many divergencies which I shall not tarry to point out. For while the foundation as well as the superstructure of the American Government was taken in large part from that of England—some by direct inheritance and some by conscious imitation—yet the architects who used these materials gave rein to their individual fancies and convictions and produced a building different in many respects from the ancestral home. The changes time has made in the new structure and the old have not always made them more alike.

Both, for instance, are on the model of government through parliamentary assemblies. But the British Parliament, having enacted a law, proceeds in its own person through the Ministry to supervise its execution; our Congress, having given birth to a statute, has nothing to do with its subsequent career, unless indeed it

chooses to play the part not of executive but of executioner. When Parliament has expressed its will, it lies with no court to say that its powers have been exceeded, for Parliament is itself the reservoir of the full power of the State; with us any Act passed by Congress or by the Legislatures of the several States is open to challenge in any court, from the lowest to the highest, upon the ground that it oversteps the limit which the Federal or State Constitution has fixed for the exercise of legislative power. The Royal veto in England has long lapsed into desuetude by lack of use, but no single President of the United States has hesitated to avail himself of his constitutional authority to veto bills with whose form or substance he was not content. Parliament and Congress are each bicameral bodies, but it has been made possible for the House of Commons to have its own way, the Lords to the contrary notwithstanding. In America a firm deadlock between the Senate and the House of Representatives can be resolved only by a change of minds or a change of members. And finally, it is the theory of the British Constitution that the treaty-making power is vested in the King, acting through his responsible Ministers; while the framers of the American Constitution committed it to the joint custody of the President and the Senate.

THE CONSTITUTIONAL PROVISION

The language of the Constitution, Art. III, Sec. 2, is that "He—the President—shall have power, by and with the advice and consent of the Senate, to make

treaties, provided two-thirds of the Senators present concur."

To understand the American Constitution it is necessary to bear in mind the circumstances and the atmosphere which surrounded the convention by which it was devised. That body met hot on the close of the War of Independence, and its members had all borne in greater or less degree some part in the struggle. To them it had been one of resistance to arbitrary and tyrannical authority. They had suffered, as they believed, from a deliberate effort on the part of the Crown to enlarge its power and invade the domain of the elected representatives of the people; and they were determined that, having shaken off their allegiance to George III, they would set up no imitator in his stead. With few exceptions, of whom Alexander Hamilton was the most conspicuous, all were overshadowed by a wholesome fear of unrestrained and ill-defined authority. To speak of a government as "strong" was to condemn it in advance. The political thought of the day, moreover, was under the spell of Montesquieu and his monumental treatise on the Spirit of Laws, and accepted as axiomatic his tripartite classification of the powers of government as Legislative, Executive, and Judicial, and his dictum that liberty was safe only when no two of these were lodged in the same hand. The machine which the convention invented, was one of checks and balances throughout, alotting to each grand division its appropriate powers, but making the exercise of these conditional upon the concurrence of one or both of the others. Thus, while

Congress alone may legislate, the President may veto and the Courts may test the statute by the constitutional yardstick. The President has great power of appointment to office and great authority as Commander-in-Chief of the Army and Navy; but the Senate must confirm his appointments and Congress alone can raise and maintain, assemble or dismiss, the forces which he is to command. The Judges of the Federal Courts hold office during good behavior, and are independent and untrammelled in the discharge of their judicial duties; but the Senate must confirm them upon appointment, and Congress must prescribe their numbers and the organization and jurisdiction of the Courts over which they are to preside. Indeed I think at the moment of but one power given without some corresponding check—the power of executive clemency—although even here the President would be answerable before the Senate by impeachment for its corrupt use and to the people at the ballot box for its unwise exercise.

Few governmental agencies are invented outright. Their roots are commonly in the past. It will help therefore to recall the three distinct stages through which the revolting colonies passed on their way from individual independence to Federal Union.

The first of these was the era of the Continental Congress, first assembled in 1774, composed of delegates from the several colonies, whose duty it was to concert measures for the common defence. It was this body which afterwards declared war, adopted the Declaration of Independence, and gave birth to the Articles of

Confederation. It was a gathering of plenipotentiaries from independent units, bound together by no written compact. Nevertheless it found it expedient to contract with foreign powers. Commissioners were appointed to negotiate with various European nations, but the treaties which they reported were made for and on behalf of the thirteen States by name, and the Congress shared with no other officer the power to direct the negotiations and ratify the result.

The second was the period of the Confederation, beginning with the adoption of the Articles of Confederation, framed in 1777, finally ratified by all the States in 1781, and lasting until the inauguration of the new Government under the Constitution in 1789. In entering the Confederation the States were careful to reserve their "sovereignty, freedom and independence, and every power, jurisdiction and right which is not by the Confederation expressly delegated to the United States in Congress assembled." The sole and exclusive right and power of entering into treaties and alliances was vested in the "United States in Congress assembled," upon condition that nine, that is to say two-thirds, of the thirteen States voting as units in the Congress should assent to the same. So dedetermined was the Congress to keep in its own hand the trust thus committed to it that the appointment of a Secretary of the United States for the Department of Foreign Affairs in 1782 was accompanied by a resolution requiring all instructions to Ministers of the United States, all letters to Ministers of Foreign Powers, in relation to treaties, all letters of credence

and the plans of the treaties themselves to be submitted in advance to Congress for its inspection and approbation. This was certainly clumsy machinery, yet it sufficed to bring about in 1783 the treaty with Great Britain which recognized American independence and established the new nation.

The third era is of course that of the "more perfect Union" under the Constitution, which began with the inauguration of President Washington in 1789. When the Constitutional Convention met in 1787 the mind of the delegates was accustomed to Congressional control and State approval of treaties and treaty-making, and therefore it is not surprising that the first draft reported to the convention by its Committee on Detail vested the power to make treaties and appoint ambassadors in the Senate alone, choosing that body because it was the representative of the States, as was the lower House of the people. After discussion of this proposal, which was criticized as lacking in those elements of secrecy, dispatch, and prompt decision so necessary in delicate negotiation, a later report recommended the transfer of the power to the President, acting by and with the advice and consent of the Senate, or of two-thirds of the members present. This provision, although finally adopted, was not permitted to escape without challenge. Some thought the power should lie with the President alone, others that is should remain solely with the Senate. Some thought the requirement of a two-thirds majority objectionable, since a minority might be able to block a treaty of peace and thus prolong a war which a majority were anxious

to conclude. Others fancied that the danger lay rather with the President, who, if the Senate were not left in sole control, might block the conclusion of such a treaty in order to prolong the great accession of power and influence coming to him in consequence of a state of war. Gouveneur Morris urged that the concurrence of the President and a bare majority of the Senate should settle the question of peace; while Elbridge Gerry contended that treaties of peace dispose ordinarily of such vital matters that they of all others should be guarded by the two-thirds requirement. Numerous amendments, presenting these and other points of view, were voted down, and the clause was permitted to stand as we have it to-day. As Charles Cotesworth Pinckney of South Carolina put it in the debates that followed when the work of the convention was before the several States for their approval:

"At last it was agreed to give the President a power of proposing treaties, as he was the ostensible head of the Union, and to vest the Senate (where each State had an equal voice) with the power of agreeing or disagreeing with the terms proposed."

Or in the language of Thomas Jefferson in his Manual of Parliamentary Practice, adopted by the Senate as the basis of its rules of order:

"By the Constitution of the United States this department of legislation is confined to two branches only of the ordinary Legislature; the President originating and the Senate having a negative."

Perhaps this brief summary puts the case as well as would a longer exposition. It answers, at least, to

the point where the work of the Senate is concluded; for I would have you understand that in the formation of a treaty, valid and binding upon the United States, there are three distinct and indispensable stages. These are, first, negotiation by the President; second, approval by the Senate; and third—and this is by no means a mere form—ratification by the President. . . .

In the beginning President Washington thought it the better plan to meet the Senate in person before negotiations were begun. He presented himself accordingly to take their advice touching a proposed treaty with the Southern Indians, propounding a series of questions for their consideration. Discussion broke out, the session was adjourned to the succeeding day, and finally the Father of his Country departed with what one chronicler describes a "discontented air," adding, "Had it been any other than the man whom I wish to regard as the first character in the world, I would have said with sullen dignity."[1] Another, with perhaps even closer approach to the facts, reports him as saying when he left the Chamber that he would be d——d if he ever went there again.[2] He kept his word, and although the rules of the Senate still make provision for the decorous procedure to be observed on such occasions, Senator Lodge remarked on the floor of the Senate on January 24, 1906: "Yet I think we should be disposed to resent it if a request of that sort was to be made to us by the President."[3] The precedent thus

[1] Maclay's Sketches of Debates in the First Senate of the United States, 122-6.

[2] Six Memoirs, J. Q. Adams, 427.

[3] Cong. Rec., 59th Cong. 1st sess., 1470.

set remained unbroken for 128 years, or until President Wilson appeared before the Senate on January 23, 1917, to address them upon the essential terms of peace, chief among these being the formation of a league of free nations to guarantee peace and freedom throughout the world.

Notwithstanding this unpleasant experience, President Washington continued throughout his term to invoke the opinion of the Senate by written messages upon negotiations which he proposed to inaugurate; but with his disappearance from office the custom fell into disuse and has practically disappeared.[1] . . . (500 words omitted.)

THE APPROVAL OF THE SENATE

But free and unfettered as is the President at every stage of the negotiations, the Senate is no less so when the result of his efforts is laid before it. It then becomes not only the right but the duty of all Senators to give expression to their impartial and independent judgment; and save for moral suasion the President is as powerless to influence their conduct as were they to dictate his own. Moreover, party ties cannot be relied upon to produce favorable action, for occasions are rare when any political party commands two-thirds of the seats in the Senate or a like proportion of those present and voting.

Without entering upon the intricacies of parliamentary procedure, it must be admitted that the path of a treaty through the Senate is not always strewn

[1]Butler on Treaty-Making Power of U. S., sec. 462.

with roses. The treatment meted out has taken many different forms. The Senate has at various times (1) approved unconditionally, (2) approved with amendments, (3) approved without express amendments but upon condition that certain changes should be made, (4) approved with an accompanying resolution of reservation or interpretation, (5) failed or refused to act and so permitted the treaty to die an *un*natural death, or (6) disapproved and rejected. . . . (700 words omitted.)

RATIFICATION BY THE PRESIDENT

If the treaty has survived its ordeal in the Senate there remain the final steps of ratification by the President, the exchange of ratifications with the contracting power, and the President's proclamation declaring it the law of the land. Here there returns to the President all the freedom which he originally enjoyed. He could have declined in the first instance to negotiate; he could have elected not to lay the negotiated treaty before the Senate; he could at any time before the final vote have withdrawn it from their further consideration; and now he may decide to proceed no further upon the advice and consent which the Senate has expressed. This is true as well when the action of the Senate is one of unanimous approval, as when it is one of grudging consent or mutilating amendment.[1] In either case he may lock the treaty in his desk or consign it to cold oblivion in the public archives.

The roster of such diplomatic casualties is by no

[1] Crandall on Treaties, par. 53.

means short. It displays the constant jealousy with which the Executive and the Senate have guarded their respective powers. There was tremendous mortality, for instance, when the Senate and President Roosevelt locked horns over the arbitration treaties negotiated by Secretary Hay with a number of nations. These provided for the reference to the Hague Court of all difficulties of a legal nature as well as those relating to the interpretation of treaties, which could not be settled by diplomacy, and which did not affect vital interests, independence or honor. The reference in each case was to be made by special protocol or agreement, presumably by the direction of the President. This the Senate amended so as to keep the matter in its own hands. President Roosevelt was so deeply incensed that he refused to go on with the treaties. We hear from Hay again after this experience with the remark that:

"A treaty entering the Senate is like a bull going into the arena: no one can say just how or when the final blow will fall—but one thing is certain, it will never leave the arena alive."[1]

THE CONSTITUTION SUPREME

I have spoken of the untrammelled discretion of the President and the Senate, but the phrase is really a misnomer. In the words used by Herodotus to describe the freemen of Greece, "Though free they are not absolutely free, for they have a master over them, the law." Like all other officers of the Government they

[1] II Thayer's Life of Hay, 393.

dare not exceed the authority which has been granted to them, and a treaty no less than a statute must conform to the Constitution and yield to its superior force. No treaty, by way of illustration, would have binding force which violated the Constitutional prohibition against the establishment of religion or the restriction of its free exercise, which abridged the right of the people peaceably to assemble and to petition for a redress of grievances, which sought to re-establish chattel slavery, or which disturbed the Constitutional distribution of power.

In matters requiring the appropriation of money or affecting customs dues and tariffs, the consent of the House of Representatives must also be obtained before the treaty can be executed: for like the House of Commons it holds the purse, with the right to unite in all appropriations and to initiate all legislation for raising the revenues, and it is zealous in the defence of its prerogatives.

Whether the Federal Government can agree to the cession of territory without the consent of the State of which it forms a part, is a question that has caused no little academic discussion. When the north-eastern boundary between the State of Maine and Canada came to be settled, the precaution was taken to have the State represented in the negotiations by commissioners and to secure the consent of its Legislature. But if the time should come—which, in the pious language of the old treaties, "is not to be expected and may God forbid"—when the territory of the United States is successfully invaded, there will be a pretty controversy

as to the right of the Federal Government to ransom the rest of the Union by ceding all or any part of the invaded portion.

Of more practical consequence is the query whether by the use of the treaty-making power the Federal Government can deal with any of those matters left by the Constitution to the control of the States; matters of public morals, public health, the hours of labor, or, as in the case of our most recent treaty with Great Britain, the protection of the wildfowl that come and go across the Canadian border. Here there is fierce battle among the pundits. You will think it strange after the Constitution of the United States has been in force for 140 years such questions should still be open. I can only reply that there are many more equally unsettled, and as to all of them we wait for a deliverance in the fullness of time from the Supreme Court as the final arbiter and interpreter.

CONCLUSION

Such in meagre outline is the treaty-making power of the United States, and the machinery by which it operates. An unfriendly critic might denounce it as complicated and cumbersome, ill adapted to the complex demands of international intercourse, slow in action and uncertain in outcome. The requirement of a two-thirds rather than a majority vote in the Senate he might criticize not unjustly as a dubious excess of caution. He might point his moral and adorn his tale with many instances of sharp and frequently bitter discord between Presidents and Senators. Of this

audience, however, I ask only that if you think it like Rob Roy MacGregor "ower bad for blessing," you pronounce it also "ower good for banning." For, believe me, the American people are like for many years to accomplish through this means their compacts with mankind. The checks and balances by which it is surrounded, the free and full debate which it allows, are in their eyes virtues rather than defects. They rejoice in the fact that all engagements which affect their destinies must be spread upon the public records and that there is not, and there never can be, a secret treaty binding them either in law or in morals. Looking back upon a diplomatic history which is not without its chapters of success, they feel that on the whole the scheme the fathers builded has served the children well. With a conservatism in matters of government as great perhaps as that of any people in the world, they will suffer much inconvenience and run the risk of occasional misunderstanding before they make a change.

VII

The ceremonies of today are not without their deep significance. They mark that essential unity of the English-speaking peoples of which the name and fame of Shakespeare is shibboleth and sign.

VII

SHAKESPEARE'S BIRTHDAY MEMORIAL

At Stratford-on-Avon, April 23, 1920.

THIS is holy ground. The sacred dust here mingled with the soil has sanctified forever this enclosure. The blaze of undying genius illuminates this spot and all around it with all of immortality things mortal can attain. To this shrine today, as on yesterday and tomorrow, the feet of countless pilgrims press with reverential zeal. Three centuries have spent themselves in praise of Shakespeare; three times three generations of men have turned to him for inspiration. The words set down for Elizabethan England have long since become the common treasure of mankind. One who speaks here should then be content when he has enrolled himself with all humility among the throng of worshippers.

But for America I ask the right to say that she comes not as a stranger to pay tribute to the poet of a foreign land or of an alien tongue. Her pride in Shakespeare is no less than England's nor held by any lesser right. It is not merely because she speaks his language, and needs no interpreter to make her feel the thrill of his majestic music, that neither time, nor chance, nor

change can rob her of her share in his legacy to men of English speech. Canada, Australia, New Zealand, and the islands of the sea may come under their common flag to claim their share of the inheritance, but America, though she bears a standard of her own, does not forget that in the days when Shakespeare lived and sang she herself lay hidden in the womb of the same great and fertile motherland that gave him birth. She stands here as a daughter in the house to claim her right of patrimony.

Surely, then, the ceremonies of today are not without their deep significance. They mark that essential unity of the English-speaking peoples of which the name and fame of Shakespeare is shibboleth and sign. In the blood-stained drama of a frightful war this unity has played but yesterday a part greater than any that Shakespeare ever dreamed. In the providence of God it will supply in coming years an epic of peaceful glory which no genius less lofty than his own will be worthy to portray.

VIII

From the Arctic to Cape Muzon, from the Pacific to the Atlantic, we have settled all the controversies of moment and have fixed the definite location of the boundary line. . . . Need I point the obvious moral? Is it not the old truth that trust is wiser than distrust, that confidence is nobler than jealousy, and that there are saner ways than war for nations to settle their disputes?

VIII

THE UNGUARDED BOUNDARY

*Excerpts from paper read before The Birmingham and Midland Institute, England, in **1920** when Ambassador Davis served as its President, and later delivered before the American Geographical Society, April **24, 1921.** The speech is generally considered the best available exposition of American-Canadian amity.*

Of the many artificial lines which the hand of man has traced on the habitable surface of the globe, certainly at the moment none exceeds in significant importance the one to which I beg to direct the attention of this distinguished audience. Bismarck is reported to have said that the most significant circumstance in current history was the fact that practically the whole of the North American continent speaks the English language. The meaning which he attached to that fact finds its symbolic expression in the location and history of the boundary line between the United States and Canada.

On a front of 5,400 miles, or, roughly, as far as from New York to Buenos Aires or Petrograd, or from London to Cape Town or Bombay, by land and water, over mountain and plain, through prairie and forest, the British Empire and the United States meet each other face to face, without thought of defense or fear of aggression. In all that distance the only sentinels that

guard the line are the silent monuments erected by the joint action of the two nations; the only vessels are the unarmed ships which carry the commerce of their common waterways; the only weapons are the woodman's ax, the huntsman's rifle, and the tools of fruitful trade and agriculture. Peace reigns from end to end as profound and undisturbed as the quiet of the primeval forest that still clothes many reaches of the boundary line. It is a peace, moreover, not of monotony or of solitude, for a journey along the windings of this far-flung frontier is an epitome of the industrial and commercial life of the two countries. . . .

(For lack of space the body of the address, some 6,000 words, is omitted. It describes in geographical detail the entire borderland between Canada and the United States, the scenes and historical names linked therewith. Mr. Davis discusses the Treaty of 1783, establishing the boundary, the settlement of the Maine-New Brunswick line, the boundary through the Great Lakes and westward to the Rockies, the famous Oregon Treaty, the Alaskan boundary and other settlements. Mr. Davis concludes as follows:)

This completes the story, and from the Arctic to Cape Muzon, from the Pacific to the Atlantic, we have settled all the controversies of moment and have fixed the definite location of the boundary line. You will agree that a result, attained at the cost of so much effort, which means so much to the millions of people now living along the border and to the many millions more who will crowd it in the future, must not be exposed to the hazard of mistake or forgetfulness. I am glad to report that the duty to prevent this has not been neglected. This brings me to say a few words of the labor that has been and is being expended to

mark the boundary for the benefit of this and of coming generations.

Under a series of treaties between Great Britain and the United States, dated in 1903, 1906, 1908, and 1910 respectively, the marking of the boundary from end to end has been assigned to two commissions; the land boundary to be marked by the International Boundary Commission—which is composed of two members, one Canadian and one American; the water boundary by the International Joint Commission on Waterways — composed of six members similarly divided. Some fugitive work had been done before. After the Webster-Ashburton Treaty of 1842, two gentlemen, Colonel J. E. Bucknall-Estcourt on behalf of Great Britain and Mr. Albert Smith for the United States, were designated to mark the line from the St. Croix River to the St. Lawrence. They went diligently about it, and erected some 700 triangular iron boundary posts, bearing on one face the legend, "Boundary, Aug. 19th, 1842"; on the second, "Lt.-Col. J. B. B. Estcourt, H. B. M. Comr."; and on the third, "Albert Smith, U. S. Comr."; but the posts are discreetly silent as to the names of the countries in interest. Perhaps one might characterize this an an example of monumental egotism. On the far western reaches of the boundary some posts had been erected, and also some mounds of earth and stone cairns, but the marking was inadequate where it existed at all; but now, as a result of the labor of these commissions, the line is thoroughly marked and monumented from end to end, except where the far northern snow fields make permanent

marks impossible. On the land boundary five-foot posts of aluminium bronze, set in concrete, are stationed at intervals of from one to four miles, intervisible, so far as practicable, and twenty-foot sky-line vistas have been cut through the forest; by water, range marks and finders are set along the visible shore at every turning point, and the line is chartered through the broader waters. A series of accurate topographical maps, now almost finished, will complete a record made and signed under joint supervision that will always endure. The work has demanded infinite care, a vast amount of mathematical computation, and much labor both of body and of brain. Sad to say, it has not been accomplished without some loss of life in the rugged mountains and snows of the far Northwest. Of all this interesting stories might be told, did time permit. It is worth its cost, for however Great Britain and America may disagree in the years that are to come, quarrels over their common boundary are at an end forever.

I return to the thought with which I began. In the thirties of the last century the United States was greatly concerned when it appeared that a resurvey of the boundary on the 45th parallel would prove that the one million dollars they had spent in fortifying Rouses Point, New York, at the end of Lake Champlain, had been expended upon British soil. The land was conceded to America, but there is no fortification there today. When the German Emperor awarded San Juan Island to the United States, in 1872, wild predictions were made of the forts the United States would

build upon it to threaten the city of Victoria. A half century has come and gone, and even the marks of our joint military occupation have disappeared. Any member of the Canadian Parliament or American Congress who offered now a bill appropriating money to fortify the border would be regarded as mildly insane. In 1817, by a simple exchange of diplomatic notes, war vessels were banished from Lake Champlain and the Great Lakes, and the agreement, adjusted to meet the changing conditions of ship construction and revenue patrol, endures to this day. So it has been, so may it continue. Need I point the obvious moral? Is is not the old truth that trust is wiser than distrust, that confidence is nobler than jealousy, and that there are saner ways than war for nations to settle their disputes? Long may these neighbor commonwealths endure to teach that lesson to the world; and, if ever in the future passions should agitate or angry words divide them, may they turn for admonition and for warning to the Unguarded Boundary.

IX

To us who mourn his passing as that of a trusted counsellor and beloved friend, there is consolation in the thought that his unwearied spirit has found new and greater tasks; his eager thirst for knowledge is being slaked at far deeper fountains.

IX

JAMES BRYCE

Address at the Memorial Service to the Rt. Hon. Viscount Bryce at the Cathedral of St. John the Divine, New York, March 5, 1922.

On the 10th of May, 1922, James Viscount Bryce of Dechmont, County Lanark, to give him his full title, would have rounded out, if living, his eighty-fourth year of life. During that long span he was in turn scholar, teacher, historian, jurist, statesman and diplomat. To tell the sum of his labors in these various callings would be a task fit only for his own untiring and ceaseless industry. By profession a lawyer, he made his first contribution to historical literature at the early age of twenty-four with his book of the Holy Roman Empire, and the last his "Modern Democracies" at the age of eighty-three. At thirty-two he was elected Regius Professor of Civil Law at the University of Oxford. From 1880 to 1907 he was a member of the House of Commons, and filled the important governmental posts of Under-Secretary of Foreign Affairs, Chancellor of the Duchy of Lancaster, President of the Board of Trade, and Chief Secretary for Ireland. In February, 1907, he entered upon a service of six years as Ambassador from Great Britian to the United States; he returned to Great Britain on the eve

of the Great War, to enter the House of Lords, and find there further scope for the exercise of his great talents and persistent energy. In the midst of these preoccupations he made, rather than found, time to visit almost every quarter of the habitable globe, to explore all the avenues of human knowledge, and to enrich the literature of his age by constant contributions. He spoke most of the European languages with ease; and was accustomed to tell with delight of an encounter with some immigrant dwellers in the mountains of New Hampshire, who, after all other efforts at communication had failed, responded at once when he addressed them in the Finnish tongue. It has been truly said that to those who met him he appeared to have been everywhere, known everybody, and read everything. He has been called perhaps the most intelligent traveller, as he was undoubtedly one of the greatest scholars, of his time.

Even so brief a summary suggests certain personal characteristics of the man. Of these the first was his tireless industry, which led him from one task to another, eager to finish the first only that the next might begin. At one time he confessed to being engaged in the simultaneous composition of three different books; and when the completion of his "Modern Democracies" was announced it was accompanied with the triumphant declaration that at last he was free to begin the "Life and Times of the Emperor Justinian," which he had too long postponed.

With this industry went a desire for knowledge that took no count of effort and neglected no possible source

of supply. Profoundly democratic in intellectual as well as political outlook, he was ready to question the artisan at his bench as the scientist in his laboratory, or the librarian among his tomes. Every man whom he met, from the cabinet officer to cab-driver, was made to yield something to his store of knowledge. "It is facts," he cries in his "Modern Democracies," "facts that are needed. Facts, Facts, Facts." It was the motto of a life time.

And from the mass of facts which he gathered he distilled a faith in his fellow men, and the decrees of an over-ruling Providence, that was the very elixir of his life. "Without Faith," said he, "nothing is accomplished, and Hope is the mainspring of Faith. Throughout the course of history every winter of despondency has been followed by a joyous springtime of hope." It was this faith which lay behind his liberal outlook upon men and things and made him the constant foe of injustice and oppression everywhere.

To Americans, however, it is naturally the years of his ambassadorship which make the chief claim upon our memory and gratitude. He came at a time when the kindly feeling towards England, engendered during the Spanish-American War, had been chilled by a very general sympathy with the cause of the Boers. With an unrivalled knowledge of both countries Mr. Bryce set himself to the task of interpreter, making clear that he represented a friendly power bent on peace and good will. How well he succeeded let subsequent events attest. It is true that the reciprocity agreement with Canada, negotiated in his day, was re-

jected by Canada; that we failed to ratify the General Arbitration Treaty with Great Britain, which he helped to conclude; and that the question of the Panama Canal tolls clouded the hours of his departure. But others have reaped and will still reap where he had sown, and the fruits of his labors will be harmony and peace. A profound and earnest believer in the imperative necessity for confidence and co-operation among the English-speaking people, it is but fair to say that no man of his time contributed more, perhaps no man so much, to that great end.

Nor did his efforts cease with his departure from America; for in season and out he continued to preach this gospel to his fellow countrymen, while no American representative in England ever turned to him in vain for counsel and support. An address which he delivered last June in London on the study of American history closed with these words:

> "Will it not be in days to come the glory of the free English-speaking peoples, to whom Providence has given the widest influence, and therewith the greatest responsibility that any group of peoples has ever received, if they should join in using that influence to guide the feet of all mankind into the way of peace?"

Let us not doubt that such was his dearest and dying wish.

A year ago, almost to the day, upon parting with him in England, the wish was expressed that he might soon visit America, to which he replied that advancing years made that possibility remote. Yet, six months later he was here among us, still robust in body and intellect, still ready to respond to all demands of private friendship or public duty, still anxious to do his part in the

cause of international friendship and the regeneration of the world. It is gratifying to believe that the depth of American esteem and admiration was then made manifest to him; and that when the time-piece of his life at last ran down, he fell asleep with America's affectionate farewell still ringing in his ears.

To us who mourn his passing as that of a trusted counsellor and beloved friend, there is consolation in the thought that his unwearied spirit has found new and greater tasks; his eager thirst for knowledge is being slaked at far deeper fountains; and his lofty faith in the ultimate triumph of right over wrong, of good over evil, of light over darkness, is finding glorious vindication in the undying splendor of an Eternal day!

X

The weighty responsibility of the Bar is a theme too worn to be repeated here. In every democracy that ever has existed, the lawyer has been looked to as the leader of political thought. As much may fairly be said of America today The position is a proud one. It is well for the lawyer to remember that he does not hold it without challenge.

X

ON LEGAL TRAINING

Excerpts from speech before the West Virginia Bar Association, Huntington, W. Va., November 16, 1922.

. . . Most of us here have lived to see substantial changes in the standards for admission to the Bar in West Virginia. Fortunately, perhaps, the requirements in the old days were not exacting; the alleged examination before three judges—seriatim—was not usually of a searching character. In one instance, at least, I have reason to know that the candidate was admitted after being asked whether he knew about the rule in Shelley's case, and his response that he thought he did. Thanks in the main to the labors of this association, we have gone on to our present requirement of a high school education and three years' diligent study in a law school or law office. In this day of easy access, however, to the colleges and universities of this and neighboring states and the growing facilities afforded by the law school of Morgantown, is there any sound reason why we should be permanently content with any lesser standards than those fixed by the Washington Conference?

The controversial portion of these standards is, of course, the fixed requirement of two years' preliminary

training in college and the definite abandonment of the old-fashioned system of reading law in a lawyers' office as a gateway to the Bar. Theoretically, we all profess a desire to see the profession elevated, and all believe that no training is too good for those who are to fill its ranks; but having in mind the pathway that we ourselves have trod, there is a certain sentimental hesitation in requiring more of our successors.

Thus, a distinguished member of this association, in a recent minority report on the subject, has declared that these standards, retroactively applied—which may God forbid—would debar every member of the Supreme Court of West Virginia, all our federal judges, and, so far as his personal acquaintance extends, every circuit judge within the State. Who would not shrink from such wholesale slaughter! Yet the worth and distinction of our present bench certainly does not warrant the omission of all legitimate precautions to insure that those who are to prepare the cases which they must decide, and some of whom must come to succeed them in their offices, shall be adequately trained in mind and spirit when they come to the Bar.

It is the same *argumentum ad hominem* which, whenever this subject is discussed, brings to the fore Patrick Henry with his scant six weeks of Coke upon Littleton and the Virginia Statutes, notwithstanding the fact that, as William Wirt says, "Henry could rarely see the bearing of reported cases." Other great names in the same category are Oliver Ellsworth, whose only text books were Bacon's Abridgement and Jacobs' Law Dictionary; John Marshall, with his six

weeks of lectures under George Wythe, or Abraham Lincoln, digging away at his Blackstone in his country store. Obviously, these are names to conjure with, both at home and abroad. Those American lawyers who chanced to attend the meeting of the Canadian Bar at Vancouver this past summer and to listen to the debate on this identical question cannot fail to have been struck with the similarity of the problem and with the arguments adduced, even to the introduction of Lincoln as an exemplar.

But the argument proves far too much. If the system that produced such men can be relied upon to repeat and continue the performance, by all means let us leave it entirely unchanged. Measured in this balance, even our present West Virginia requirements go too far. If there is any method of determining the identity of a Henry, an Ellsworth, a Marshall or a Lincoln in embryo, let us bring him to the Bar with the least possible obstruction or delay. But until we have made certain of the as yet undiscovered natural law from which such prodigies result, let us in justice to the woud-be practitioner and his prospective clients cease to depend on miracles or leave his equipment to chance.

No American will challenge the spirit that resents any closing of the door of equal opportunity. Indeed, if the practice of the law could be regarded merely as a means of livelihood, no restrictions on entrance could be justified, for the inborn right of every man to labor for his living is one that can be neither restricted nor denied. But if the law is in truth a learned profession

and those who follow it are officers of the courts and ministers of justice, both those who practice and the public whom they serve are entitled to protection against ignorance, chicanery and false pretense.

It is urged that two years in college have no necessary connection with the fitness of a student to enter upon the study of the law, and that an even more valuable training can be had along other lines. The gentleman whom I have already quoted has suggested, for instance, that the students' time could be more profitably invested for two years inside the wire cages of a bank, learning the handling, the use, and one may suppose, the fugitive habits of checks, drafts, notes and other negotiable paper. It may be frankly conceded that even colleges cannot work miracles, that many students spend their days there to small purpose, and that some are betrayed into the pursuit of rather useless learning, but if this were true of the majority of colleges, or even of the generality, the sooner their doors were closed the better for all concerned. I confess that a day by day perusal of bank checks and promissory notes does not seem to me to furnish the highest grade of intellectual exercise. They are highly interesting documents, many of them, especially to the payee, but to say the least, they lack literary variety.

How much of the law and of the lawyer's labor lies just here. How greatly his usefulness depends upon the proper use of language. Webster's declaration that "the power of clear statement is the great power at the bar" should be hung on the walls of every law

school—and every lawyer's office, too, for that matter. It is true, both in and out of the courtroom; it is profoundly true upon the Bench. A nice and accurate choice of words would save many a decision from hurtful uncertainty. Two years in college work, if it added nothing to the equipment of a student but this, would be time well invested.

Unquestionably the thought is present in the mind of many observers in our crowded centers that two years in an American college with its personal contact, no less than its teaching, will do much for those that need a realizing sense of American ideals even more than mere scholarship. This phase of the question has been called a purely local one and to be dealt with as such. No doubt there are differences to be considered between great centers of population like New York or Chicago, where a multitude of persons, equally ignorant of our theories of government and our professional ideals, are rushing to the Bar, and localities like West Virginia, where the Bar is still fed in the main from those who, like their fathers before them, are native to the soil. The sort of material which is coming forward in the large cities is exemplified by a retort recently made by one of their number to a rebuke from a local committee on grievances. "Gentlemen," he said, "I am not at all interested in what you choose to call ethical. All I want to know is what is lawful. There is real peril here and it is no more local than a fire whose sparks may fly far across the forest. Men move to and fro in this country whether they are of good character or bad. Even

those who are spared unpleasant contact with the unworthy must suffer by the general ill-repute they bring upon our chosen calling. It is this which justifies the action of the American Bar Association in treating admission to the American Bar as a matter of nation-wide interest and demanding, so far as local differences will permit, the application of uniform rules. In this day of multiplying statutes and decisions, increasing intricacy of legal, financial, economic and social problems, and still more, of increasing effort to bring human action under regulatory control, it is no longer fair the country over, either to the student or to the public, to put immature and untrained minds to the study of the law's complexities.

Undoubtedly there are colleges and colleges, law schools and law schools, and also, one may add, lawyers' offices and lawyers' offices and lawyers and lawyers. With this thought in mind, it was made the duty of the Council on Legal Education to prepare and publish a list of those law schools which comply with the standards set up at Cincinnati and those which do not. On this task the Council is already engaged. Its report, of course, can have no other effect than that due to information from a reliable source. From the first American law professorship founded by Thomas Jefferson at William and Mary in 1779 to the 147 law schools now within the continental area of the United States is a far cry, but the process of evolution has been neither equal nor uniform. Indeed, one writer on the subject, having in mind in particular the difference between part time and whole time schools, urges

that there be a corresponding division of the profession and its duties into those demanding a higher and those demanding a lesser degree of training. To a casual observer, this seems an effort to make the profession fit the law schools rather than the law schools the profession. All talk of such a division in this country is idle. Our professional habits are too deeply rooted to be changed, and after some observation of a dual profession, divided into barristers and solicitors, and a unitary profession composed of ambidextrous lawyers, I for one would never vote to abandon the latter system. . . .

The weighty responsibility of the Bar is a theme too worn to be repeated here. In every democracy that ever has existed, the lawyer has been looked to as the leader of political thought. As much may fairly be said of America today. The position is a proud one. It is well for the lawyer to remember that he does not hold it without challenge.

A cry goes up day by day from the commercial world that sighs for that chimerical thing, "a business government" conducted by "business men" on "business principles." I say "chimerical" for the cardinal aim of business is to produce a profit within the shortest time, by the most direct methods, and with the least possible discussion or debate. Such a program would make sorry havoc if applied in the political sphere. Men must labor there often with little hope of immediate result. They must be content to walk around obstacles which they cannot surmount. And they must not begrudge the endless discussion necessary to put in

motion the mighty but glacial force called public opinion. It was Catherine of Russia who said to Rousseau as he expounded his theories, "That is all very well, M. Rousseau, for you philosophers who write on paper, but I, poor Empress that I am, deal with a far more sensitive material: I must write my edicts on the human skin."

Among these contenders for the prize, the lawyers will hold their leadership only if they rise to their opportunities, both as individuals and as an organized body. I confidently expect that in its efforts in this direction the American Bar Association will receive the sympathy and support of every member of the American Bar within or without its ranks. It is our task, by percept and example and by personal efforts and sacrifice, to perserve on this country for ourselves and our offspring.

A nation yet, the rulers and the ruled.
Some sense of duty, something of a faith,
Some reverence for the laws ourselves have made,
Some patient force to change them when we will,
Some civic virtue, firm against the crowd.

XI

Yet it cannot be that we are to be shaken forever by the ague of agoraphobia—the dread of being outdoors. If we cannot have faith in the righteous purpose and good intent of the great mass of mankind, let us at least have more of faith in ourselves.

XI

TO THE AMERICAN BAR ASSOCIATION

Excerpts from address to American Bar Association at Minneapolis, August 29, 1923, on the occasion of Mr. Davis' retirement as its President.

Once more the earth has come full circle round the Sun, and the American Bar Association, facing about from the Golden Gate, has made its way to Minneapolis and the Northern Lakes. To the land where the "Father of Waters" has birth we have come to counsel together and to rededicate ourselves to the service of our profession and our country. As we view this happy region, we re-echo the language of the bold Pierre Radisson who wrote of it in his "Journal of Discovery" in 1658 that "the country was so pleasant, so beautiful and fruitful, that it grieved me to see that the world could not discover such enticing countries to live," adding that "those kingdoms are so delicious and under so temperate a climate, plentiful of all things, the earth bringing forth its fruit twice a year, the people live long and lusty and wise in their way." Perhaps if he were writing now he would be willing to withdraw the somewhat invidious words with which that sentence closes; and certainly if he could see the monuments of industry and art by which we stand

surrounded and could compare the population of these busy cities with the scattered tribes of his early visit, he would repeat his equally sage observation that "where that there is lucre, there are people enough to be had."

We who come from other sections may well felicitate ourselves upon this opportunity to enjoy amid such surroundings the hospitality of our Minnesota brethren. It is a great pleasure also to extend a welcome to distinguished representatives from the Bars of England, France, Canada, Argentina, and Japan. Their presence not only confers distinction upon this gathering, but gives eloquent testimony to the common interest and ideals that animate the legal profession throughout the world. Under whatever sky or through whatever forms, we serve as members of one great priesthood the common cause of justice among men. Our temples may be built on different lines, their rituals may vary, but the incense which we offer lifts upward to the same eternal throne. Ours the great task everywhere of calling men to worship at the shrine of liberty under law....

There are evident signs, fortunately, that the lawyers of America have not forgotten this axiomatic truth—the steps which have been and are being taken to elevate the educational standards of the profession, to purge it of unworthy members, to reform our system of judicial procedure and improve its administration, to lessen the divergence of statutes and decisions among the States, and to visit upon the bench the gen-

tle admonition of a code of judicial ethics, are all directed to this single end.

Of even greater significance, perhaps, is the recent creation of the American Law Institute and the beginning of a re-statement of our common law. Whether the difficulty of this particular task or the need of its accomplishment is the greater it would be hard to say, but certain it is that it can no longer be safely postponed. The enormous increase in our legal literature and the intolerable maze of precedents through which we wander has alarmed every thoughtful student and has placed upon the profession burdens which only supernatural power can support. The tale has often been told, but the recent celebration of the Kent Centennary offered an occasion to contrast the one hundred and eighty volumes of reports and the dribble of statutes which made up his working library with the eighteen thousand five hundred volumes of reports and the inundation of statutes that constitute a complete American law library today. Of course, no lawyer, however long-lived or industrious, and no law office, however numerous its force, can pretend to sift a mass of material so vast as this. Few would even attempt it, preferring rather to take some grains of wheat here and there and treat the rest as chaff until a more diligent opponent can prove the contrary. Escape from this Serbonian bog seems to lie only in a frequent reversion to general principles, stated with the utmost simplicity and invested with all the authority that can be attained short of statutory enactment.

More than the lawyer, however, will the public be the

gainer if this work is well and truly done, for the testing point of all law is its contact with the citizen, who surely has the right to ask that the rule by which his conduct is governed shall be made as certain and as simple as human limitations will allow. In a federal republic, moreover, with many independent jurisdictions professing allegiance to the same body of laws, it is high statecraft to seek uniformity both in statement and in interpretation not only as a safeguard to the citizen, but as the surest bond of union itself.

It would be worse than idle to ignore or minimize the fact that there are lions in the way, which only high courage can confront. A mere compilation of authorities classified according to their standing for or against a given proposition will add nothing to the work already done and well done by current digests and encyclopedias. Where there is difference of opinion as to any rule of law, choice must ultimately be made and the rule must be stated in accordance with the weight of authority or of reason. Nor is it a labor where the end can be seen from the beginning, as an architect foresees the building when the first stone is is place. Law, which deals with human life, must live itself; its fabric is ever changing; it can never be reduced to the cold rigidy of permanent formulae.

To the Director of the Institute, who will speak during this meeting, I leave the not ungrateful task of reporting the progress which has been made and the scope and outline of its future plans. I add only that, as those in charge of the movement have already pointed out, their completed labors will have no im-

perial edict or legislative fiat to give them force and vigor. Their sanction can be found only in the approval and the usage of lawyers at the Bar, and, more important still, of judges on the bench. Although the Institute must be left to do its work with the freedom that springs from entire independence, it is none the less entitled to look to this body for continued counsel and support.

But while this advance toward the simplification of the unwritten law has been set on foot the forces which make for greater complexity in the substantive law do not halt for the moment their ceaseless activity. The statute books are still to be reckoned with and the *lex scripta* seems steadily to overtake in surface area if not in actual depth and volume the *lex non scripta.* Many things contribute to this end. For one, our system of congressional, as opposed to parliamentary government, which leaves the legislative initiative with the individual member instead of confiding it to a responsible administration; and for another the promptings of personal or partisan ambition eager to secure public favor by a show of action.

Deeper still than these is the fact that changing conditions in the material world, new conceptions of human rights and the relations growing out of them, the struggle to translate into law economic ideas both new and old, and not least of all the governmental experiments made necessary by the war, have profoundly modified and are profoundly modifying doctrines once accepted as settled and dogmas believed to be fundamental. Thus, the development of the means of com-

munication and of transport have centralized our government to an extent once undreamed of. Increased solicitude for the health and physical comfort of the individual has led men to speak and to think quite mistakenly of so-called "human rights" as of something which can be divorced, either in practice or in legislation, from so-called "rights of property." The doctrine that the greatest duty of governments is the encouragement of individual effort is apparently giving ground before the theory that governmental energy must supplement if not supplant the exertions of the individual. Constitutional limitations have yielded to the police power under the pressure of real or supposed emergencies, and more and more legislatures have been content virtually to abdicate by announcing a policy in statutory form and leaving to boards, bureaus and subordinate officers the task of filling out by multitudinous regulations those details which really make the law.

All these things tend inexorably to increase the volume of the statutory law and to add to its complexity. Deplore it or not as we may, there is no use in trying to sweep back the sea; and so long as there is more glory in making a new law than in repealing an old one, so long the pages of our session acts will continue to multiply. Here, however, the field is clear for a frequent restatement and codification of existing law, nowhere more needed at this time than in the Federal Statutes. A half-century has elapsed since the revision of 1875; congressional committees have grappled with the subject from time to time, but apparently in vain. Perhaps the frequent changes in their membership and

the difficulty of securing co-ordinate action by the two houses makes the prospect of relief from that source remote; but, if so, the Bar should demand without further delay the appointment under congressional authority of an expert commission to perform the work. . . .

Running down the list, I come to another suggestion that enters a domain where controversy is acute and where it is difficult to divorce one's thought from recent political history. I refer to a pending resolution permitting the ratification of treaties by a majority instead of a two-thirds vote of the Senate. At the mere mention of the subject, memory reverts to the long and bitter struggle over the treaty of Versailles, and apprehension looks forward to the coming debates upon our adherence to the World Court; but the question rises far beyond these mere incidents and demands consideration upon the merits. Year by year the relations of the United States with the globe become increasingly important to our welfare at home and our security abroad. Year by year, as our wealth and population increases, our influence expands, our interests widen, and our points of contact with the outside world multiply. More and more it will be found necessary to regulate our foreign intercourse by convention and agreement, and greater and greater must grow our need for promptitude in decision, responsibility in action and continunity in foreign policy. So large a vessel as the United States of America is unsafe upon the high seas itself and is likewise a menace to others unless it can answer in to the helm. Can it be truly said

that our present system is adapted to that end? Can we shut our eyes to the proverbial jealousy between the executive and legislative branches of our government, the practical impossibility of a unified party control over two-thirds of the Senate, and the natural tendency of every legislative body to debate rather than decide?

There can be little doubt historically that the two-thirds rule was dictated in the Constitutional Convention not only by the prevailing jealousy of executive power but also by recollection of requirement under the Articles of Confederation that nine of the thirteen States voting as units should assent to any treaties entered into by the "United States in Congress Assembled," a provision into by the "United States in Congress, which in its turn derived directly from the mutual jealousy of the colonies. It was thus, as John Hay once despairingly remarked, that "The Fathers in their wisdom ordained that for all time the kickers should rule"; a lament which he followed later with the saying that "A treaty entering the Senate is like a bull going into the arena; no one can tell just how or when the final blow will fall—but one thing is certain, it will never leave the arena alive." It is not easy to see why either in principle or in policy one man who votes "no" should be considered *ipso facto* twice as well informed and weighty as one of his colleagues who votes "yes." Nor does it contribute either to national influence, prestige or safety that the process of ratifying or rejecting treaties should degenerate into an effort to discover some qualifying formula ac-

ceptable to a minority. There is grave danger in forgetting that, whether in matters domestic or foreign, the business of government is to govern.

Let us say, if you choose, that no harm has yet come to the Republic from the present system. But let us recall by way of warning that a treaty for the annexation of Texas was lost in 1844; that the Virgin Islands were offered us in 1865 for one-third the price we finally paid; that for twenty years after the defeat of the treaty of 1888, the fisheries dispute with Canada was left to disturb our relations with our nearest neighbor; and passing over certain recent occurrences, that the treaty of peace with Spain was carried by a single vote. If it be said that since no party can hope to secure a two-third vote composed of its own adherents, and the two-thirds rule insures a non-partisan consideration of foreign questions, can it not be truly replied in the light of a partisan inaction than non-partisan action?

(One thousand words relating to the Supreme Court, and proposed amendments to the Constitution are here omitted.)

The thought of the Supreme Court of the United States brings us naturally to a cognate theme. At our meeting last year we adopted without a dissenting vote a resolution expressing "The hope that a way may be found by which the Government of the United States may avail itself of the Permanent Court of International Justice." Apparently there is reason to believe that this hope is not long to be deferred and that America, true to herself and to her oft-repeated professions, is ready to take her stand in favor of this great experiment. Our late lamented Chief Magis-

trate, whose untimely passing still casts a shadow over all American hearts, has made this his testament to his fellow countrymen and it cannot be that they will fail in its execution. We cannot pretend that our wish so modestly expressed has brought matters to their present posture; but perhaps on the other hand the assurance of our continued approval and support will be not unwelcome to those upon whom responsibility for the nation's course must now descend.

We may congratulate ourselves, I trust, that the issue will be decided without regard to partisan considerations. Politics, we are often told, should end at the three mile limit; yet where disagreement exists, as disagreement must, upon matters of foreign policy, it is a mere counsel of perfection to advise political parties to ignore it or to refuse a vigorous espousal of the one or the other view. But here is a principle to which all political parties stand committed by repeated platform declarations and by the voices of their authorized spokesmen; here is an institution whose creation America has been tireless in pressing upon the world by precept and by example. We have in the sight of all men constantly professed the Ciceronian view that "there are two kinds of contentions, one by reason, one by force; the former is proper to men, the latter to brutes." On the principle, therefore, of the judicial settlement of international disputes, and upon this Institution, the Permanent Court, now in being, all Americans of whatever faction—both those who feel that to support the Court does not exhaust the present obligations that weigh upon the coun-

try and those who take a narrower view of our national duty—should find it possible to unite.

Even so, the most robust optimism cannot conceal the fact that opinion on the subject is not to be unanimous. Those who are astute in opposition are ready with reasons as numerous as the autumnal leaves of Valambroso. On the one hand we are told that there is no power in the Court to enforce its decree and only a Court so equipped is worthy of our support; while at the same moment another warns us in solemn tones that the United States will doubtless be called upon to contribute money, soldiers and sailors to enforce the judgments of the Court. Again, it is said that the creation of a Court must await a codification of the rules of international law, failing which the Court will be without rule or compass; yet on the other hand it is asserted that if we submit to the Court it may conceivably decide against us under existing rules of international law. Another objects that the presence of an American judge upon the tribunal is a mere accident dependent upon the suffrage of the voting nations; although a second statesman, lately returned from a survey of European iniquity, insists with some disregard both of law and geography that in joining the Court we shall arrogate to ourselves the right to sit at Geneva and dictate law to Europe. This suggestion will no doubt perplex the Court in its chambers at the Hague, since even granted our adherence it may prove unwilling to delegate to us the function of writing its opinions. At some stage of the debate we shall hardly escape heated reference to the impairment of sover-

eignty, of the surrender of independence; while the over zealous friends of the Court, who see it as all that is needed to establish a regime of lasting peace, will contribute little more real light to the discussion than those bitter opponents who think it powerless for good. Nor can those fail to make themselves heard, who, with a sincerity that need not be impugned, begin and usually end by distrusting any form of international compact whatever.

Yet it cannot be that we are to be shaken forever by the ague of agoraphobia—the dread of being outdoors. If we cannot have faith in the righteous purpose and good intent of the great mass of mankind, let us at least have more of faith in ourselves. The thought is one that can be no better expressed than in the great words used by Burke, great because they bear the test of application to circumstances other than those which called them forth. Rallying to himself in the dark days of 1775 those who believed in the rights and destiny of America, he cried:

> "A great empire and little minds go ill together. If we are conscious of our station and glow with zeal to fill our place as becomes our station and ourselves, we ought to auspicate all our public proceedings on America with the old warning of the Church—*Sursum Corda!* We ought to elevate our minds to the greatness of that trust to which the order of Providence has called us."

I submit, Members of the Association, that the American Bar can do no greater service than to sound that note and keep it sounding in the ears of their countrymen.

XII

What is the Republican theory? Says the Republican: This tax collector stands here both to serve the Government and to help private business. . . . Now, what is the Democratic theory? "Why," says the Democrat, "This toll gate is maintained solely to keep the road in repair. . . . Neither as the Socialist would have it, to take private property and convert it to the use of the state; nor as the Republican would have it, to take one man's property and put it in the pocket of his neighbor; but solely that the Government may have revenue by means of which it may serve all alike."

XII

TAXATION

Address before the Democratic Women's Luncheon Club of Philadelphia, January 24, 1924.

MEMBERS OF THE CLUB, LADIES AND GENTLEMEN: I can assure you of my sincere appreciation of this very cordial welcome, and my real sense of honor in being invited to talk to this serious-minded body of people on serious questions. This gathering is practical citizenship; this is certainly the sort of thing that ought to be imitated all over these United States; and this is certainly the sort of assembly to bring inspiration and hope and encouragement to the heart of everyone who believes in democratic principles, and who hopes for the success of democratic policies. (Applause.)

Now, I confess to you that, in common with a good many other public speakers, I suffer intensely from anticipatory embarrassment, and my nervousness on this occasion is greatly enhanced by the character of topic on which I have been asked to speak to you. If there is any individual in all this broad land more unpopular than another, with fewer friends and a smaller number of people who care to meet him, it is the unhappy tax collector; and if there is any subject that

we all alike want to avoid by every means within our power, it is the subject of taxation. Yet here, on this more or less festal occasion, at high noon, with the broad sunlight inviting us to the outer air, I am asked to stand and discuss with you this unwelcome subject.

And yet, uninviting as it may be, there is no subject in all the realm of politics that approaches it in importance; there are no questions that involve so much of human liberty, of governmental continuity, and of the principles of free institutions, as those which gather round the question of taxation. For everything you would have your government do, and all the things for which you hope, are reduced in their last analysis, to questions of taxation.

Would you have any Army and Navy for your national defence—it is a question of taxation. Would you have courts and judges for the settlement of your controversies—it is a question of taxation. Would you have policemen to guard you while you sleep—it is a question of taxation. Would you have the welfare of the workers and the education and upbringing of your children cared for—it is a question of taxation. Whatever else they may involve, all governmental problems come at last to questions of taxation; and if any people in the world ought to realize how much of human liberty is involved in the subject, certainly we of the United States should.

There is no definition of human liberty from which you can omit the right of the individual to do as he will with his own. There is no freedom where men are not permitted to enjoy the fruits of their own

labors; and there is no despotism equal to that which arbitrarily and without necessity subtracts from a man's accumulations what he is unwilling to surrender. When the government seeks to take from the citizen any portion of that which he owns, the sum of his rights and liberties is engaged in the justice of that subtraction.

What was it that called the English barons together on the meadows of Runnymede and led to the writing of Magna Charta? It was the imposition of taxes upon them by King John. Why was it that John Hampden, the simple English squire, rode down to his village church to meet the tax collectors, and defied them to their face? What was it that brought on the great Cromwellian Revolution? The question of taxation. And why was it that a number of American gentlemen, down in Boston Harbor, tumbled a few boxes of tea into the ocean and brought about a revolution that is responsible, indirectly, for our meeting here today?

And now that I have hinted at the magnitude of the topic, perhaps you will forgive me if I undertake simply, and in as elementary fashion as I can, to state to you as Democrats what it is that the Democratic party believes on the subject of taxation. I am not going to weary you with rates and figures and statistics. I am not even going to discuss the merits of the bills dealing with taxes that are pending at this moment in Washington. I want, if I can, in the simplest manner possible, and within the shortest time, to tell you what I think are the fundamental principles to

which the Democratic party holds, and has held through all its long history.

Over and over again one is asked what the difference is between a Republican and a Democrat? I have heard some cynical people say that after all there was only one difference between political parties, only one issue upon which they always divided, and that was the cardinal issue between the "ins" and the "outs." (Laughter.) I grant you that is a very live issue and responsible for a great deal of difference of opinion. But if that were all, American political campaigns would be mere sham battles; and conceding, as we must, that there is as much intelligence, as much virtue, as much character in the ranks of our Republican opponents as there is in our own, it would be a mere choice of persons when election day came around.

But is there not something more than that? Does not the Democratic party, the oldest political organization in the world today, with a continuous life of more than a century, that has seen its rivals rise and fall and disappear, represent more than that? Are there no fundamental principles to which it holds on this great subject, touching as it does the rights of the government, on the one hand, and the liberty of the individual, on the other? Well, I think there are.

Reducing the discussion to its simplest terms, there are three questions that must always be answered with reference to taxation: What is it for? That is question No. 1. What method will you use? That is question No. 2. How much are you to take? That is question No. 3. In answering these questions—What for? What

method? How much?—the Democratic party is guided by certain clearly defined, basic, fundamental ideas which it is willing at all times and everywhere to avow and defend. Let us see. What is it for? For what purpose can the government come to you or to me and demand that we shall surrender part of the money we have justly earned and the property that we rightfully possess? May I throw the answer into the form of a parable, which may illustrate my meaning better than a labored argument.

Picture to yourselves a great broad highway; not like Wall Street in New York, that begins at a church and ends at the river. This highway ends in a river, it is true, broad and deep and dark; but while there are churches all along the roadside, at the entrance there is nothing but a tollgate. On this highway there travel men and women and children, all hurrying to do business with the lone ferryman who waits at the river side. Some of them journey in high-powered Rolls-Royce limousines; some in humble Fords; some of them with donkey carts; some afoot; some contented and happy and prosperous; some limping and lame and struggling; but all pursuing their common way, day by day, down to the turnpike's end. As they enter the road they pass this tollgate, where the keeper stands, demanding tribute from everyone of them in the name of the Government of the United States, the State of Pennsylvania, or the City of Philadelphia; nobody who travels on that great broad road of human life gets past the tollgate without paying something to the tax collector.

Now, what does he get that money for? What right has he to stop those men and women and demand payment for their passage on the road they must travel and from which they can not escape? There are three theories about that. First, the theory of the Socialist. The Socialist says that he collects that money in order that the government may purchase cars and cherabancs and limousines, and possess itself of all the means of transportation on the road; and when it has done so, then the government will allot to the travellers their seats in the cars, all who travel in government conveyances, and ample seats will be provided so that none may go afoot. That is the Socialist theory of the reason for taxation on the road. Very fine! Very beautiful! It is very pleasing to the travel-worn and the footsore to know that their days of trudging are over and that all shall have a ride at the government's expense; but the Socialist must not ask us to forget that to carry out his project someone must allot the seats. Whoever allots the seats will be master of those who have to ride, for no man can be called free if his right to travel on Life's highway depends upon the will of another, whether that other be a governmental bureaucrat or an imperial despot.

What is the Republican theory? Says the Republican: This tax collector stands here both to serve the Government and to help private business. We will have him keep his toll so high that certain individuals whom we trust and whom we admire, and in whose public spirit we have confidence, may put their little toll gates alongside his, and every time he collects a

dollar from the passerby, they may collect their profit also; and then when they have done that, they will buy with this money we have helped them to collect their own cars, and cherabancs, and limousines, and put them on the road; if they find a poor neighbor trudging along their employ they will put him on their car and give him a ride, and thus the good fortune we help them to enjoy will filter down to all their fellow travelers. And naturally when they come to distribute their benevolence they will not forget the generous political party that has helped them make their fortunes. That is the Republican theory. Very fine! And if human nature were as perfect as some day, in the providence of God, it may become, that might work, but it fails to take into account the fundamental selfishness of mankind; it fails to remember that those who share in governmental privilege are rarely or never willing to make a fair divide with anyone else, whether their own employees or the general public.

Now, what is the Democratic theory? "Why," says the Democrat, "this toll gate is maintained solely to keep the road in repair; to police it so that those rushing along in high-powered cars can be made to respect the rights of their fellow-travellers; to prevent joy riding; and to erect along the roadside rest and comfort stations where all the weary and foot-sore may repose before they renew the journey of the tiresome day." That is the Democratic theory of taxation;—that revenue may be collected solely for the support of the government, not to give privilege or advantage to any man, nor to confiscate the property of any man.

Neither as the Socialist would have it, to take private property and convert it to the use of the state; nor as the Republican would have it, to take one man's property and put it in the pocket of his neighbor; but solely that the government may have revenue by means of which it may serve all alike. (Applause.) When that is done, when the road is kept open, when the joy riding is stopped, when travelling facilities are provided along the roadside, then, says the Democrat, "make your journey and make it yourselves, old and young, rich and poor, weak and strong, with the faculties that God Almighty has given you. Make it not as wards of the state; make it not as petted beneficiaries of governmental privilege, but make it as free men, free to carve out your own destiny and run your race in your own good way and time." Now, that is what taxation is for, as we see it.

How are you going to get it? What sort of demands is this tollgate keeper entitled to make of you? May I be a little bit technical? I will try not to be abstruse.

Taxes, as all the books will tell you, are of two kinds—direct and indirect. What is the difference between them? The direct tax is one easily visible to the taxpayer himself. It is that which is laid directly upon the house that you own, upon the money you have in bank, upon the annual income you derive; it is the sort which leads the tax collector to approach you with various charming memoranda, and advise you that on such and such a day he will be pleased to receive your contribution. The thrill of that particular day in the year is not to be forgotten. Thus the Federal

Government imposes a tax in the form of an income tax, and those who have to pay it are not left in doubt about the demand; although under current administration they may be advised five years later that the collector was entirely mistaken, and they owe just twice as much. (Laughter.) That is direct taxation, and under that system every man knows just what demand it is that the government is making upon him. It does not follow merely because he has no escape from payment that he never has any way of reimbursing himself; I shall come to this again in a moment, for, of course if a man in business has a large tax to pay, he endeavors to increase his profits so that they may cover the burden of his tax. His taxes inevitably make for high prices. If he is a doctor, perhaps, he raises his fees; if a lawyer, of course he doesn't. (Laughter.) If he is a merchant, he may mark up the price of his goods a little.

Now, the other system is indirect taxation. Indirect taxation is that form of tax which is customarily attached to a given article; and although paid in the beginning by the man who imports or who manufactures or makes the article, is immediately added by him to its selling price, and is finally paid by the ultimate consumer with or without his realizing that he pays it. When a duty of fifty cents, we will say, is added to a yard of cloth, the importer puts that fifty cents per yard on the price of that cloth; the wholesaler who buys from him reimburses him the fifty cents he has added to his price; the retailer, when he buys from the wholesaler; the consumer, when he buys from the retailer,

pays the retailer the fifty cents a yard on that cloth. The man or woman buying that cloth for a suit or gown is not told about the fifty cents. There is no tag on the cloth to tell them that fifty cents a yard was paid at the customs house. They do not realize it. It is indirect taxation but it comes out of their pocket. You will find on every box of cigars or every package of cigarettes a blue revenue stamp. Who paid for that? Well the manufacturer of the cigars or cigarettes was compelled to buy those stamps and put them on that box, and he paid for them. What did he do? He added, of course, the price of those stamps to the cost of the cigars or cigarettes, and when the retailer bought from the wholesaler he paid him back the cost of the stamps, and when the ultimate smoker bought them from the retailer, he paid the retailer back the cost of the stamps, and thus with every puff of your cigar or cigarette you are paying some indirect taxes.

Now, the payer of the indirect tax does not ordinarily know what he is paying, and that leads to this state of affairs. Governments and politicians are apt to prefer, as a matter of policy, to get their money by indirect rather than by direct taxation because the taxpayer is far more docile under those circumstances. The operation on his pocket-book is less painful. But, on the other hand, it is quite clear that indirect taxation can no longer raise in this country enough money to support the government. We must have direct taxation, and when the moment comes to choose between the one method or the other, which should a Democrat prefer? He should prefer, I submit, direct taxation,

because the individual knows then what his government is costing, he knows how much of his property is being taken, and he is vigilant and alert to see that there is no waste of his money when it is collected. (Applause.)

And there is still another reason why he should prefer direct taxation. Indirect taxation is always paid by the consumer. Well, the richest man in all these United States, try as he will, can eat but so much food in the course of twelve months, and he is lucky beyond most of his kind if he can eat as much as his hard working neighbor; and he can wear only so much clothes to keep him warm, even if he is rather more dandified than his less prosperous friend; so if the tax is placed primarily upon consumption, then the poor man pays as much in fact and in comparison more, than does the rich, because such a tax is not upon the capacity to pay but upon the need to consume.

And then, last of all, how much can your government take? On that the Democratic party holds a position that cannot be misunderstood. Over and over again in the history of the party it has declared that unnecessary taxation is unjust taxation. All unnecessary taxation is unjust taxation. It is much better that the Congress of the United States, the Legislature of Pennsylvania, and the Common Council of the City of Philadelphia, should be worried about making buckle and tongue meet than that any one of them should be tempted to extravagance by a surplus in the treasury.

There is another thought and a very important one in view of the situation that prevails throughout the

world today. One of the wisest men that ever lived, a Scotchman, and none the worse for that, Adam Smith, said and said truly, that but three things were necessary to lift any nation from the lowest stages of barbarism to the highest plane of civilization and those three things were peace, easy taxation, and a tolerable administration of justice. There was never a nation so great and so prosperous, there was never a people so happy and self-contented, that it could not be destroyed by excessive taxation. It was high taxes that brought the mighty Roman Empire to the dust; it was high taxes that destroyed the inititative and vigor of the people of the Italian peninsula so that they fell an easy prey to the barbarians who fell upon them from the north. In Russsia it has been proven only today that when the tax collector makes his rounds and takes away from the individual, whether farmer, manufacturer, merchant or banker, the great incentive of self-interest, sooner or later the whole economic system falls into hopeless chaos and confusion. And even in this, the richest of all countries, given the will and the unwisdom to pursue it, even our prosperity and vigor could be surely sapped and destroyed by excessive taxation.

Now, I promised you I would not undertake to talk figures, that I would not undertake to discuss the Mellon bill, the Gerner bill, or any other of the bills apt to appear in the next two months. I imagine the subject is not exhausted in Washington, and I fancy it will not be possible to exhaust it here today.

May I say just a word, speaking as a Democrat to

Democrats: that there is not now, there ought never to be, a day when any Democrat would not welcome the largest possible reduction of the taxation on the people. There is no reason why the Democratic party should not unite so far as it can with those who speak for the party in power to lighten the present excessive burden.

Need I remind you that in 1919, President Wilson (Applause) advocated that, and but for partisanship he would have accomplished it. In 1920, similar recommendations came from the Secretary of the Treasury of the United States, repeated by his successor. So long as any reduction is possible, unnecessary taxation is unjust taxation.

And something more. I agree to what has been said by many Democrats—that simply to reduce the rates of the income tax is not the end of the story. There is being taken from the pockets of the people by the present system of a protective and partisan tariff four billions of dollars a year, but a fractional part of which goes to the government. That burden must be lessened as well.

Now for myself, I am but a private in the ranks, but it seems to me there are or should be five items in the Democratic program on this question. The first should be, to render taxation as far as possible unnecessary by cutting down the expenses of the government. The second, to avoid increasing taxation by avoiding new expenditures, no matter what pleasing name or persuasive reason may attend them. Economy in government is something more than good bookkeep-

ing; it means there as elsewhere doing without things you want. The third should be, to support by every means in our power the budget making machinery of the government. The fourth, to revise the tariff on a truly competitive and revenue basis. And fifth, to reduce the income tax rates, not denying relief to any man simply because he is rich, and not forgetting, on the other hand, the greater needs and burdens of the comparatively poor.

Last, and above all, as the keynote of all Democratic policy, in passing upon any question let the controlling aim and ambition be to keep the road open for private enterprise and personal initiative. (Applause.)

XIII

For those who walk in high places of the earth there is little shelter.

XIII

WOODROW WILSON

At the memorial service at the Madison Square Garden, New York, on the day of Woodrow Wilson's funeral, February 6, 1924.

EVEN as we gather in this serious observance, all that is mortal of the great man to whom we pay this tribute of respect is passing to its final resting place. Nothing that we say or do here can add to the solemnity of that sad journey, nor can word or act of ours add aught of honor to his fame.

The words that he spoke have become part of the imperishable treasures of the English tongue. The deeds that he did are written on the lasting history of his country, and of the world. He himself has passed beyond the reach of human praise or blame into the presence of the Judge Eternal.

And yet I think we should do something less than justice to our own feelings if we should omit the observance that calls us here. The feelings of sympathy for those who are nearest and dearest to him in the loss they have sustained; feelings of regret for the great man who is gone from among us; feelings of reverent gratitude for the service he rendered in his day; all mingled with a sense of solemn joy that his

long martyrdom is over and that weariness and weakness and pain are his no more, forever.

In no country in all the world does Fate write into the lives of men more startling contrasts than in this. Washington, the humble Virginia planter, who became the creator of a nation; Lincoln, the simple backwoodsman, who became its preserver; Woodrow Wilson, whom Fate called from the quiet shades of scholastic life to the fierce white light of the Chief Magistracy of the Nation. Having placed him there, she filled his hands with problems whose solution demanded the strength of ten, and called him to play his part upon a grander stage than was ever given to any other American, a theatre whose actors were kings and emperors and warriors and statesmen; whose attendants were nations in arms, whose drama was composed of the stuff that makes up the life and death of men and nations and empires, and whose audience was the gods themselves watching the unfolding destiny of men.

Then, as that great drama was drawing to its close, she broke his sword and left him on the battlefield. But though his weapon was broken in his hand, his spirit she could never break, and, serene and dauntless to the end, he lies today surrounded by the reverential homage of his countrymen amid the plaudits of an admiring world.

This is not the time or the hour to review his great career. The biographer and the historian will speak of his dauntless courage, his audacious boldness, his inflexible will, his fixity of purpose. They will record that from that first day when, overcoming the prec-

edents of a century, he met the Congress of the United States face to face, he asserted a compelling leadership not surpassed in all the annals of this country. That without recourse to the base device of personal flattery or official favor, by mere force of intellectual power and persuasion, he pointed the way to legislative achievements of universal benefit to all his countrymen.

They will tell that when at last the great catastrophe broke upon mankind, this man of peace had the quiet patience and the resolution to bide his hour and stand firm against all haste and all impetuous decision until he led into that great conflict a nation united from border to border, fighting the first war in all its history with no peace party to divide and dissipate its energies. They will record that when he went into that struggle, he entered it with an ardent and a flaming zeal from which the very soul of his countrymen took fire. The Universal Service Act, well denominated, as I believe, the greatest single legislative achievement of any combatant country; the assembling of all the resources of the nation, the creation of a great new armada, and the sending overseas of the mightiest army that ever crossed the ocean; all these were the work of this quiet scholar. His it was, as the accredited voice of all the allied nations, to so define the reasons and the purposes of the war as to bring new hope to the despairing hearts of men, and to cause even the weary watchers in the trenches to shake off their wretchedness and rise to combat with redoubled strength.

And then, when the conflict drew toward its close,

his it was to propose a program of healing and of reconciliation, so wise and so sound, that not even those who bitterly opposed it have to this day proposed any substitute.

For those who walk in the high places of the earth there is little shelter. As Dr. Fosdick has said, the winds of criticism and complaint beat there unceasingly.

> "He who ascends the mountain tops will find
> Their loftiest summits clad with ice and snow;
> He who surpasses or subdues mankind
> Must look down on the hate of those below;
> Though far above the sun of glory glow,
> And far beneath the earth and ocean spread,
> Round him are icy rocks, and loudly blow
> Contending tempests on his naked head."

To this hard rule the bitter experience of him who has gone was no exception.

I recall an occasion in the late spring or early summer of the year 1919, just before his labors in the city of Paris were concluded. To a question as to his strength and condition he answered that he was very weary, that it was his purpose to return to the United States, fight for ratification of his treaty, and then take a long sleep. And now the sleep has come, a long and an enduring one. But let us be assured, not the sleep of oblivion, of forgetfulness, for, as has been truly said, no name in human history has ever died, from Socrates to Lincoln, whose wearer associated it by his life and service with a great moral idea.

There is a story of the Lacedæmonians who tested the strength and the endurance of their youth by sending them to run to the distant mountains and bring

back some token to show the height they had the power to reach. One came bearing in his hand a branch of the oak tree, sturdy above the storm, and offered it as proof of his valor. A second came later waving a branch of the pine that lives where the oak can no longer climb, and a third, to tell that he had gone beyond the trees and only an Alpine flower was found for his report. And then when the day had died, the fourth came home, weary, worn and spent, bleeding his feet and empty his hands; they taunted him with failure. "Ah," said he, "at the height I reached there were no trees to shelter; no flowers to console; there was nothing but rocks and snow and biting winds, but from that lone and awful outlook, I saw the open sea."

And so, from the lofty eminence that he reached, this great American saw the sea of universal and world-embracing peace. Today his regal spirit looks out upon the wide sea of Eternity. May it be given to us and to our children some day to see the world-wide peace his eager eye envisioned and his prophetic voice foretold lapping the shores of all the continents where dwell the sons of men.

XIV

We meet, therefore, to rededicate ourselves to a party whose ambition is service, not mastery; whose aim is opportunity, not privilege; whose toast is honor and not profit; and whose ideal is freedom and not restraint.

XIV

THOMAS JEFFERSON

The eulogy was delivered at the Jefferson Birthday Dinner, New York, April 13, 1924.

We celebrate tonight the birthday of one whom all Americans should delight to honor,—the author of the Declaration of Independence, the first of American Secretaries of State, and the third President of the United States. Content himself to be known only as the author of the Declaration, of the Statute of Virginia for Religious Freedom, and founder of the University of Virginia, he stands in history as the man who gave form and voice to the social philosophy by which his country has since been guided, and who spread its boundaries from the Mississippi River to the summit of the Rockies and beyond.

As Democrats, we hail him as the founder of a party which has endured the storms and stress of 133 years of continuous political warfare. We meet tonight to renew our allegiance to the great principles he laid down for its guidance, and to declare ourselves ready for renewed combat in their defense. Its long life proves that he who made it was a builder of things that last; established in strength because founded upon

eternal justice; and adorned with the beauty that flows from liberty alone.

In the days of Jefferson, the noun "progressive" had not yet been coined to help men to accept the fundamental ideas of democracy without using the Democratic name. He was content to be known merely as a liberal among liberals, and to bestow that name upon those who followed him.

As his spiritual heirs, it is worth our while to pause now and then to review our inheritance and to strengthen our hearts by the repetition of the Democratic creed. Following in his footsteps, we believe that all men are created equal; that they are endowed by their Creator with inalienable rights to life, liberty and the pursuit of happiness; that the best government is that which governs least; that the Constitution and its limitations were made to be obeyed; that local self-government is indispensable to liberty; that the people can be trusted to control their own destiny; that taxes can be levied only for the support of government economically administered; that unnecessary taxation is unjust taxation; that the end of all government is to furnish equal and exact justice to all men and special privileges to none; and that public office is a public trust. These are the essentials of that Jeffersonian creed which has been through all the years the guide and stay of the party which he founded and endowed. We meet, therefore, to rededicate ourselves to a party whose ambition is service, not mastery; whose aim is opportunity, not privilege; whose boast is honor and

not profit; and whose ideal is freedom and not restraint.

It is well that we should do so. For at what time has there been greater need of such ideals, or greater demand for a party which professes them? Do not the signs multiply that the country, wearied and disgusted with the existing order, is ready to turn again to the party of Jefferson and put upon its shoulders the burden of public responsibility?

Twelve years ago the Democratic party was called to power. It signalized its advent by scourging from the Capitol the army of lobbyists and agents placed there by those who sought special favor from their government. For eight long years it conducted the public affairs, revising, rewriting and administering the laws in the interest of no person, class or section, but with an eye single to the welfare of the country as a whole. Under its victorious leadership the country fought the greatest of all its wars, and although money flowed as money will in war in rivers of molten gold, no hint of scandal, bribery or corruption attached to any of those who held official place. The man and great Democrat who then sat in the chair that Jefferson had filled lifted high the ideals of America where all men might see them, and seeing, the nations of the earth believed and followed him.

Four years ago, a country spent and weary with the exertions of the war, harassed by doubts and fears and played upon by appeals designed to reach all the forces of discontent, faced about and turned its steps to a mythical Utopia which bore the ingratiating name of

Normalcy. The history of the last three years is made up of its wanderings in a futile search for this promised land. We shall learn next November whether it has relished the journey and how much further it is ready to march following the same guides. Make no mistake. No matter how many separate questions may be involved in the inquiry, the issue before the American people this year is the question of confidence or no confidence in those who are now seeking to administer the government, and their vote will be "content" or "non-content."

What is the record? With control of the executive and a party majority in both branches of Congress, what statute has been passed for the general welfare? True, we have had a tariff bill of the type with which the American people have been too long familiar; where every beneficiary of special privilege was invited to ask and to receive the reward to which his party fidelity or campaign contribution entitled him; but the boasts of party discipline and efficiency have disappeared in a leaderless, disorderly and discordant chaos unsurpassed in the history of the American Congress. What of the new day that was to dawn in the foreign relations of the United States? Where is the association of nations that was so blandly promised? Where, indeed, is our adherence to the International Court, the legitimate offspring of American precept and example, which has been demanded of the Senate even though it be in halting tones, by both of the latest incumbents of the executive chair?

What is to be said of the administration of the execu-

tive departments of the government under those "best minds" called together for the purpose? Here, if anywhere, is to be found the acid test, for, after all, by far the greater part of the business of government consists not in devising new laws or planning new expedients, but in running with wisdom and efficiency the machinery by which the people are already served. No patriot, however partisan, can exult in the sorry disclosures of greed, corruption and mal-administration that have shocked the country and shamed America before the world. No right-thinking man will seek to palliate or defend them. These partisan advocates who try to screen the wretches that have been exposed by crying out against the exposure, belittle and besmirch only themselves. Corrupt officials and their friends make a sorry defense when they can do no better than share their blame with those who do not share their official responsibility.

This responsibility none of those concerned must be permitted to escape, nor can their misdeeds be wiped from the party record on which the country is to pass its judgment. What is the whole sordid story after all but the fruit of the tree of special privilege? Teach men out of office that government has favors to bestow, and you have gone a long way toward teaching men in office that personal gain is theirs for the taking. Special privilege and official corruption are congenial though ugly twins. If they can buy favors by party service, why should there be surprise if they try to bargain more directly? Much has been said, and rightly, of the unholy alliance between big business

and crooked politics, but there is danger of putting the emphasis on the wrong adjective. For whether it is big business striving to grow bigger, or little business hoping to grow big, it is crooked business and crooked politics that make the accursed partnership. In the court of public opinion, as in a court of law, we must see to it that no distinction in point of guilt is drawn between the public official who betrays his trust and the private citizen who profits by that betrayal.

Let us get back to Jefferson. "The whole art of government," said he "consists in being honest." "A public office is a public trust." Blazon these mottoes on the banner of the Democratic party and the American people, who when betrayed are not wont to be patient in their wrath, will rally to the call.

THE END.

APPENDICES

APPENDIX A

A SURVEY OF MR. DAVIS' PHILOSOPHY*

One who would sacrifice his independence to gain the Presidency would certainly not hope to regain it after he had entered on that office.

In the light of history let us learn to walk with humility that befits the great.

Personal liberty is the doctrine of self-restraint.

One may be a very good American without insisting that none but American flags shall be carried in patriotic parades. Even the pastime of twisting the lions tail is not the final and ultimate test of devotion to American institutions.

One may be a very good American and still believe that all wisdom will not die with us and that other nations possess many virtues which we not only do not monopolize, but which we can well afford to imitate.

For no one can be truly free who does not live within the circle of his rights, or who is unwilling to concede to others all that he can justly claim for himself.

Any compromise with the Bolsheviki creed is but a league with death.

The foundation of the right of property is a man's right in himself. The loss of this right is slavery.

Human rights and rights of property are not different or antagonistic—they are but parts of one great whole.

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*From speeches gathered by "The Literary Digest."

APPENDIX B

TELLING POINTS IN EARLY CAMPAIGN SPEECHES (1924)

CORRUPTION—In 1913 The Lobby was scourged from Washington; in 1921, like a flock of unclean birds hastening to the feast, it gathered from the four winds and descended upon the city....At the head of the buccaneers as they marched along rode the Secretary of the Interior.

FOREIGN AFFAIRS—They (Republicans) are content to conduct the foreign affairs of the United States through private citizens, unofficially observing. We (Democrats) think America is great enough to speak in her own name.

THE KLAN—Whenever any organization, no matter what it chooses to be called, whether Ku Klux Klan or by any other name, raises the standard of racial or religious prejudice....it does violence to the spirit of the American institutions.

PROHIBITION—The enforcement of the Prohibition Law gave an opportunity for action of which the denizens of the Little Green House on K Street were quick to avail themselves, Trade was brisk and profits were easy.

THE TARIFF—The Tariff afforded an opening to the hosts of privilege for an assault less direct but far more devastating to the public pocketbook.